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RECORDS OF THE UNITED STATES

NUERNBERG WAR CRIMES TRIALS

UNITED STATES OF AMERICA v. CARL KRAUCH ET AL. (CASE VI)

AUGUST 14, 1947-JULY 30, 1948

Roll 7

Transcript Volumes (English Version)

Volumes 17-19, p. 5,603-6,881

Jan. 20-Feb. 11, 1948



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INTRODUCTION

On the 113 rolls of this microfilm publication are reproduced the records of Case VI, *United States of America v. Carl Krauch et al.* (I. G. Farben Case), 1 of the 12 trials of war criminals conducted by the U.S. Government from 1946 to 1949 at Nuernberg subsequent to the International Military Tribunal (IMT) held in the same city. These records consist of German- and English-language versions of official transcripts of court proceedings, prosecution and defense briefs and statements, and defendants' final pleas as well as prosecution and defense exhibits and document books in one language or the other. Also included are minute books, the official court file, order and judgment books, clemency petitions, and finding aids to the documents.

The transcripts of this trial, assembled in 2 sets of 43 bound volumes (1 set in German and 1 in English), are the recorded daily trial proceedings. Prosecution statements and briefs are also in both languages but unbound, as are the final pleas of the defendants delivered by counsel or defendants and submitted by the attorneys to the court. Unbound prosecution exhibits, numbered 1-2270 and 2300-2354, are essentially those documents from various Nuernberg record series, particularly the NI (Nuernberg Industrialist) Series, and other sources offered in evidence by the prosecution in this case. Defense exhibits, also unbound, are predominantly affidavits by various persons. They are arranged by name of defendant and thereunder numerically, along with two groups of exhibits submitted in the general interest of all defendants. Both prosecution and defense document books consist of full or partial translations of exhibits into English. Loosely bound in folders, they provide an indication of the order in which the exhibits were presented before the tribunal.

Minute books, in two bound volumes, summarize the transcripts. The official court file, in nine bound volumes, includes the progress docket, the indictment, and amended indictment and the service thereof; applications for and appointments of defense counsel and defense witnesses and prosecution comments thereto; defendants' application for documents; motions and reports; uniform rules of procedures; and appendixes. The order and judgment books, in two bound volumes, represent the signed orders, judgments, and opinions of the tribunal as well as sentences and commitment papers. Defendants' clemency petitions, in three bound volumes, were directed to the military governor, the Judge Advocate General, and the U.S. District Court for the District of Columbia. The finding aids summarize transcripts, exhibits, and the official court file.

Case VI was heard by U.S. Military Tribunal VI from August 14, 1947, to July 30, 1948. Along with records of other Nuernberg

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and Far East war crimes trials, the records of this case are part of the National Archives Collection of World War II War Crimes Records, Record Group 238.

The I. G. Farben Case was 1 of 12 separate proceedings held before several U.S. Military Tribunals at Nuernberg in the U.S. Zone of Occupation in Germany against officials or citizens of the Third Reich, as follows:

<u>Case No.</u>	<u>United States v.</u>	<u>Popular Name</u>	<u>No. of Defendants</u>
1	<i>Karl Brandt et al.</i>	Medical Case	23
2	<i>Erhard Milch</i>	Milch Case (Luftwaffe)	1
3	<i>Josef Altstoetter et al.</i>	Justice Case	16
4	<i>Oswald Pohl et al.</i>	Pohl Case (SS)	18
5	<i>Friedrich Flick et al.</i>	Flick Case (Industrialist)	6
6	<i>Carl Krauch et al.</i>	I. G. Farben Case (Industrialist)	24
7	<i>Wilhelm List et al.</i>	Hostage Case	12
8	<i>Ulrich Greifelt et al.</i>	RuSHA Case (SS)	14
9	<i>Otto Ohlendorf et al.</i>	Einsatzgruppen Case (SS)	24
10	<i>Alfried Krupp et al.</i>	Krupp Case (Industrialist)	12
11	<i>Ernst von Weissacker et al.</i>	Ministries Case	21
12	<i>Wilhelm von Leeb et al.</i>	High Command Case	14

Authority for the proceedings of the IMT against the major Nazi war criminals derived from the Declaration on German Atrocities (Moscow Declaration) released November 1, 1943; Executive Order 9547 of May 2, 1945; the London Agreement of August 8, 1945; the Berlin Protocol of October 6, 1945; and the IMT Charter.

Authority for the 12 subsequent cases stemmed mainly from Control Council Law 10 of December 20, 1945, and was reinforced by Executive Order 9679 of January 16, 1946; U.S. Military Government Ordinances 7 and 11 of October 18, 1946, and February 17, 1947, respectively; and U.S. Forces, European Theater General Order 301 of October 24, 1946. Procedures applied by U.S. Military Tribunals in the subsequent proceedings were patterned after those of the IMT and further developed in the 12 cases, which required over 1,200 days of court sessions and generated more than 330,000 transcript pages.

Formation of the I. G. Farben Combine was a stage in the evolution of the German chemical industry, which for many years led the world in the development, production, and marketing of organic dyestuffs, pharmaceuticals, and synthetic chemicals. To control the excesses of competition, six of the largest chemical firms, including the Badische Anilin & Soda Fabrik, combined to form the Interessengemeinschaft (Combine of Interests, or Trust) of the German Dyestuffs Industry in 1904 and agreed to pool technological and financial resources and markets. The two remaining chemical firms of note entered the combine in 1916. In 1925 the Badische Anilin & Soda Fabrik, largest of the firms and already the majority shareholder in two of the other seven companies, led in reorganizing the industry to meet the changed circumstances of competition in the post-World War markets by changing its name to the I. G. Farbenindustrie Aktiengesellschaft, moving its home office from Ludwigshafen to Frankfurt, and merging with the remaining five firms.

Farben maintained its influence over both the domestic and foreign markets for chemical products. In the first instance the German explosives industry, dependent on Farben for synthetically produced nitrates, soon became subsidiaries of Farben. Of particular interest to the prosecution in this case were the various agreements Farben made with American companies for the exchange of information and patents and the licensing of chemical discoveries for foreign production. Among the trading companies organized to facilitate these agreements was the General Anilin and Film Corp., which specialized in photographic processes. The prosecution charged that Farben used these connections to retard the "Arsenal of Democracy" by passing on information received to the German Government and providing nothing in return, contrary to the spirit and letter of the agreements.

Farben was governed by an Aufsichtsrat (Supervisory Board of Directors) and a Vorstand (Managing Board of Directors). The Aufsichtsrat, responsible for the general direction of the firm, was chaired by defendant Krauch from 1940. The Vorstand actually controlled the day-to-day business and operations of Farben. Defendant Schmitz became chairman of the Vorstand in 1935, and 18 of the other 22 original defendants were members of the Vorstand and its component committees.

Transcripts of the I. G. Farben Case include the indictment of the following 24 persons:

Otto Ambros: Member of the Vorstand of Farben; Chief of Chemical Warfare Committee of the Ministry of Armaments and War Production; production chief for Buna and poison gas; manager of Auschwitz, Schkopau, Ludwigshafen, Oppau, Gendorf, Dyhernfurth, and Falkenhagen plants; and Wehrwirtschaftsfuehrer.

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Max Brueggemann: Member and Secretary of the Vorstand of Farben; member of the legal committee; Deputy Plant Leader of the Leverkusen Plant; Deputy Chief of the Sales Combine for Pharmaceuticals; and director of the legal, patent, and personnel departments of the Works Combine, Lower Rhine.

Ernst Buergin: Member of the Vorstand of Farben; Chief of Works Combine, Central Germany; Plant Leader at the Bitterfeld and Wolfen-Farben plants; and production chief for light metals, dyestuffs, organic intermediates, plastics, and nitrogen at these plants.

Heinrich Buetefisch: Member of the Vorstand of Farben; manager of Leuna plants; production chief for gasoline, methanol, and chlorine electrolysis production at Auschwitz and Moosbierbaum; Wehrwirtschaftsfuehrer; member of the Himmler Freundeskreis (circle of friends of Himmler); and SS Obersturmbannfuehrer (Lieutenant Colonel).

Walter Duerrfeld: Director and construction manager of the Auschwitz plant of Farben, director and construction manager of the Monowitz Concentration Camp, and Chief Engineer at the Leuna plant.

Fritz Gajewski: Member of the Central Committee of the Vorstand of Farben, Chief of Sparte III (Division III) in charge of production of photographic materials and artificial fibers, manager of "Agfa" plants, and Wehrwirtschaftsfuehrer.

Heinrich Gattineau: Chief of the Political-Economic Policy Department, "WIPO," of Farben's Berlin N.W. 7 office; member of Southeast Europe Committee; and director of A.G. Dynamit Nobel, Pressburg, Czechoslovakia.

Paul Haeffliger: Member of the Vorstand of Farben; member of the Commercial Committee; and Chief, Metals Departments, Sales Combine for Chemicals.

Erich von der Heyde: Member of the Political-Economic Policy Department of Farben's Berlin N.W. 7 office, Deputy to the Chief of Intelligence Agents, SS Hauptsturmfuehrer, and member of the WI-RUE-AMT (Military Economics and Armaments Office) of the Oberkommando der Wehrmacht (OKW) (High Command of the Armed Forces).

Heinrich Hoerlein: Member of the Central Committee of the Vorstand of Farben; chief of chemical research and development of vaccines, sera, pharmaceuticals, and poison gas; and manager of the Elberfeld Plant.

Max Ilgner: Member of the Vorstand of Farben; Chief of Farben's Berlin N.W. 7 office directing intelligence, espionage, and propaganda activities; member of the Commercial Committee; and Wehrwirtschaftsfuehrer.

Friedrich Jaehne: Member of the Vorstand of Farben; chief engineer in charge of construction and physical plant development; Chairman of the Engineering Committee; and Deputy Chief, Works Combine, Main Valley.

August von Knieriem: Member of the Central Committee of the Vorstand of Farben; Chief Counsel of Farben; and Chairman, Legal and Patent Committees.

Carl Krauch: Chairman of the Aufsichtsrat of Farben and Generalbevollmaechtigter fuer Sonderfragen der Chemischen Erzeugung (General Plenipotentiary for Special Questions of Chemical Production) on Goering's staff in the Office of the 4-Year Plan.

Hans Kuehne: Member of the Vorstand of Farben; Chief of the Works Combine, Lower Rhine; Plant Leader at Leverkusen, Elberfeld, Uerdingen, and Dormagen plants; production chief for inorganics, organic intermediates, dyestuffs, and pharmaceuticals at these plants; and Chief of the Inorganics Committee.

Hans Kugler: Member of the Commercial Committee of Farben; Chief of the Sales Department Dyestuffs for Hungary, Rumania, Yugoslavia, Greece, Bulgaria, Turkey, Czechoslovakia, and Austria; and Public Commissar for the Falkenau and Aussig plants in Czechoslovakia.

Carl Lautenschlaeger: Member of the Vorstand of Farben; Chief of Works Combine, Main Valley; Plant Leader at the Hoechst, Griesheim, Mainkur, Gersthofen, Offenbach, Eystrup, Marburg, and Neuhausen plants; and production chief for nitrogen, inorganics, organic intermediates, solvents and plastics, dyestuffs, and pharmaceuticals at these plants.

Wilhelm Mann: Member of the Vorstand of Farben, member of the Commercial Committee, Chief of the Sales Combine for Pharmaceuticals, and member of the SA.

Fritz ter Meer: Member of the Central Committee of the Vorstand of Farben; Chief of the Technical Committee of the Vorstand that planned and directed all of Farben's production; Chief of Sparte II in charge of production of Buna, poison gas, dyestuffs, chemicals, metals, and pharmaceuticals; and Wehrwirtschaftsfuehrer.

Heinrich Oster: Member of the Vorstand of Farben, member of the Commercial Committee, and manager of the Nitrogen Syndicate.

Hermann Schmitz: Chairman of the Vorstand of Farben, member of the Reichstag, and Director of the Bank of International Settlements.

Christian Schneider: Member of the Central Committee of the Vorstand of Farben; Chief of Sparte I in charge of production of nitrogen, gasoline, diesel and lubricating oils, methanol, and organic chemicals; Chief of Central Personnel Department, directing the treatment of labor at Farben plants; Wehrwirtschaftsfuehrer; Hauptabwehrbeauftragter (Chief of Intelligence Agents); Hauptbetriebsfuehrer (Chief of Plant Leaders); and supporting member of the Schutzstaffeln (SS) of the NSDAP.

Georg von Schnitzler: Member of the Central Committee of the Vorstand of Farben, Chief of the Commercial Committee of the Vorstand that planned and directed Farben's domestic and foreign sales and commercial activities, Wehrwirtschaftsfuehrer (Military Economy Leader), and Hauptsturm-fuehrer (Captain) in the Sturmabteilungen (SA) of the Nazi Party (NSDAP).

Carl Wurster: Member of the Vorstand of Farben; Chief of the Works Combine, Upper Rhine; Plant Leader at Ludwigshafen and Oppau plants; production chief for inorganic chemicals; and Wehrwirtschaftsfuehrer.

The prosecution charged these 24 individual staff members of the firm with various crimes, including the planning of aggressive war through an alliance with the Nazi Party and synchronization of Farben's activities with the military planning of the German High Command by participation in the preparation of the 4-Year Plan, directing German economic mobilization for war, and aiding in equipping the Nazi military machines.¹ The defendants also were charged with carrying out espionage and intelligence activities in foreign countries and profiting from these activities. They participated in plunder and spoliation of Austria, Czechoslovakia, Poland, Norway, France, and the Soviet Union as part of a systematic economic exploitation of these countries. The prosecution also charged mass murder and the enslavement of many thousands of persons particularly in Farben plants at the Auschwitz and Monowitz concentration camps and the use of poison gas manufactured by the firm in the extermination

¹The trial of defendant Brueggemann was discontinued early during the proceedings because he was unable to stand trial on account of ill health.

of millions of men, women, and children. Medical experiments were conducted by Farben on enslaved persons without their consent to test the effects of deadly gases, vaccines, and related products. The defendants were charged, furthermore, with a common plan and conspiracy to commit crimes against the peace, war crimes, and crimes against humanity. Three defendants were accused of membership in a criminal organization, the SS. All of these charges were set forth in an indictment consisting of five counts.

The defense objected to the charges by claiming that regulations were so stringent and far reaching in Nazi Germany that private individuals had to cooperate or face punishment, including death. The defense claimed further that many of the individual documents produced by the prosecution were originally intended as "window dressing" or "howling with the wolves" in order to avoid such punishment.

The tribunal agreed with the defense in its judgment that none of the defendants were guilty of Count I, planning, preparation, initiation, and waging wars of aggression; or Count V, common plans and conspiracy to commit crimes against the peace and humanity and war crimes.

The tribunal also dismissed particulars of Count II concerning plunder and exploitation against Austria and Czechoslovakia. Eight defendants (Schmitz, von Schnitzler, ter Meer, Buergin, Haeffliger, Ilgner, Oster, and Kugler) were found guilty on the remainder of Count II, while 15 were acquitted. On Count III (slavery and mass murder), Ambros, Bueteftisch, Duerrfeld, Krauch, and ter Meer were judged guilty. Schneider, Bueteftisch, and von der Heyde also were charged with Count IV, membership in a criminal organization, but were acquitted.

The tribunal acquitted Gajewski, Gattineau, von der Heyde, Hoerlein, von Knieriem, Kuehne, Lautenschlaeger, Mann, Schneider, and Wurster. The remaining 13 defendants were given prison terms as follows:

<u>Name</u>	<u>Length of Prison Term (years)</u>
Ambros	8
Buergin	2
Bueteftisch	6
Duerrfeld	8
Haeffliger	2
Ilgner	3
Jaehne	1 1/2
Krauch	6
Kugler	1 1/2
Oster	2
Schmitz	4
von Schnitzler	5
ter Meer	7

All defendants were credited with time already spent in custody.

In addition to the indictments, judgments, and sentences, the transcripts also contain the arraignment and plea of each defendant (all pleaded not guilty) and opening statements of both defense and prosecution.

The English-language transcript volumes are arranged numerically, 1-43, and the pagination is continuous, 1-15834 (page 4710 is followed by pages 4710(1)-4710(285)). The German-language transcript volumes are numbered 1a-43a and paginated 1-16224 (14a and 15a are in one volume). The letters at the top of each page indicate morning, afternoon, or evening sessions. The letter "C" designates commission hearings (to save court time and to avoid assembling hundreds of witnesses at Nuernberg, in most of the cases one or more commissions took testimony and received documentary evidence for consideration by the tribunals). Two commission hearings are included in the transcripts: that for February 7, 1948, is on pages 6957-6979 of volume 20 in the English-language transcript, while that for May 7, 1948, is on pages 14775a-14776 of volume 40a in the German-language transcript. In addition, the prosecution made one motion of its own and, with the defense, six joint motions to correct the English-language transcripts. Lists of the types of errors, their location, and the prescribed corrections are in several volumes of the transcripts as follows:

- First Motion of the Prosecution, volume 1
- First Joint Motion, volume 3
- Second Joint Motion, volume 14
- Third Joint Motion, volume 24
- Fourth Joint Motion, volume 29
- Fifth Joint Motion, volume 34
- Sixth Joint Motion, volume 40

The prosecution offered 2,325 prosecution exhibits numbered 1-2270 and 2300-2354. Missing numbers were not assigned due to the difficulties of introducing exhibits before the commission and the tribunal simultaneously. Exhibits 1835-1838 were loaned to an agency of the Department of Justice for use in a separate matter, and apparently No. 1835 was never returned. Exhibits drew on a variety of sources, such as reports and directives as well as affidavits and interrogations of various individuals. Maps and photographs depicting events and places mentioned in the exhibits are among the prosecution resources, as are publications, correspondence, and many other types of records.

The first item in the arrangement of prosecution exhibits is usually a certificate giving the document number, a short description of the exhibits, and a statement on the location of the original document or copy of the exhibit. The certificate is followed by the actual prosecution exhibit (most are photostats,

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but a few are mimeographed articles with an occasional carbon of the original). The few original documents are often affidavits of witnesses or defendants, but also ledgers and correspondence, such as:

<u>Exhibit No.</u>	<u>Doc. No.</u>	<u>Exhibit No.</u>	<u>Doc. No.</u>
322	NI 5140	1558	NI 11411
918	NI 6647	1691	NI 12511
1294	NI 14434	1833	NI 12789
1422	NI 11086	1886	NI 14228
1480	NI 11092	2313	NI 13566
1811	NI 11144		

In rare cases an exhibit is followed by a translation; in others there is no certificate. Several of the exhibits are of poor legibility and a few pages are illegible.

Other than affidavits, the defense exhibits consist of newspaper clippings, reports, personnel records, Reichgesetzblatt excerpts, photographs, and other items. The 4,257 exhibits for the 23 defendants are arranged by name of defendant and thereunder by exhibit number. Individual exhibits are preceded by a certificate wherever available. Two sets of exhibits for all the defendants are included.

Translations in each of the prosecution document books are preceded by an index listing document numbers, biased descriptions, and page numbers of each translation. These indexes often indicate the order in which the prosecution exhibits were presented in court. Defense document books are similarly arranged. Each book is preceded by an index giving document number, description, and page number for every exhibit. Corresponding exhibit numbers generally are not provided. There are several unindexed supplements to numbered document books. Defense statements, briefs, pleas, and prosecution briefs are arranged alphabetically by defendant's surname. Pagination is consecutive, yet there are many pages where an "a" or "b" is added to the numeral.

At the beginning of roll 1 key documents are filmed from which Tribunal VI derived its jurisdiction: the Moscow Declaration, U.S. Executive Orders 9547 and 9679, the London Agreement, the Berlin Protocol, the IMT Charter, Control Council Law 10, U.S. Military Government Ordinances 7 and 11, and U.S. Forces, European Theater General Order 301. Following these documents of authorization is a list of the names and functions of members of the tribunal and counsels. These are followed by the transcript covers giving such information as name and number of case, volume numbers, language, page numbers, and inclusive dates. They are followed by the minute book, consisting of summaries of the daily proceedings, thus providing an additional finding aid for the transcripts. Exhibits are listed in an index that notes the

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type, number, and name of exhibit; corresponding document book, number, and page; a short description of the exhibit; and the date when it was offered in court. The official court file is summarized by the progress docket, which is preceded by a list of witnesses.

Not filmed were records duplicated elsewhere in this microfilm publication, such as prosecution and defense document books in the German language that are largely duplications of the English-language document books.

The records of the I. G. Farben Case are closely related to other microfilmed records in Record Group 238, specifically prosecution exhibits submitted to the IMT, T988; NI (Nuernberg Industrialist) Series, T301; NM (Nuernberg Miscellaneous) Series, M-936; NOKW (Nuernberg Armed Forces High Command) Series, T1119; NG (Nuernberg Government) Series, T1139; NP (Nuernberg Propaganda) Series, M942; WA (undetermined) Series, M946; and records of the Brandt case, M887; the Milch Case, M888; the Altstoetter case, M889; the Pohl Case, M890; the Flick Case, M891; the List case, M893; the Greifelt case, M894; and the Ohlendorf case, M895. In addition, the record of the IMT at Nuernberg has been published in the 42-volume *Trial of the Major War Criminals Before the International Military Tribunal* (Nuernberg, 1947). Excerpts from the subsequent proceedings have been published in 15 volumes as *Trials of War Criminals Before the Nuernberg Military Tribunal Under Control Council Law No. 10* (Washington). The Audiovisual Archives Division of the National Archives and Records Service has custody of motion pictures and photographs of all 13 trials and sound recordings of the IMT proceedings.

Martin K. Williams arranged the records and, in collaboration with John Mendelsohn, wrote this introduction.

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Roll 7

Target 1

Volume 17, p. 5,603-6,004

Jan. 20-28, 1948

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

OFFICIAL RECORD

UNITED STATES MILITARY TRIBUNALS NÜRNBERG

**CASE No. 6 TRIBUNAL VI
U.S. vs CARL KRAUCH et al
VOLUME 17**

**TRANSCRIPTS
(English)**

20-28 January 1948 pp. 5603-6004

OFFICIAL TRANSCRIPT OF MILITARY TRIBUNAL VI CASE VI IN
THE MATTER OF THE UNITED STATES OF AMERICA, AGAINST
KARL KRAUCH, et al, DEFENDANTS, SITTING AT NURNBERG,
GERMANY, ON 20 JANUARY 1948, JUSTICE SHAKE PRESIDING.

THE MARSHAL: Persons in the Courtroom will please find their seats.

The Honorable, the Judges of Military Tribunal VI.

Military Tribunal VI is now in session. God save the United States of
America and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: Mr. Marshal, will you ascertain if all of the defendants
are present in the Courtroom?

THE MARSHAL: May it please Your Honor, all of the defendants are
present in the Courtroom with the exception of the defendant Lubros, who
is absent and has been excused from the Court.

THE PRESIDENT: Thank you.

256 Is Counsel ready to discuss with the Tribunal for a moment this
matter of unfinished business pertaining to the cross-examination of the
Prosecution's witnesses?

DR. BOETTCHER: Your Honor, yesterday afternoon I read a copy of the
Commissioner's letter to the Tribunal. This copy is being translated
today, and I shall have it before me this afternoon in German. For this
afternoon at five o'clock I have invited all other counsel to partake
in a discussion. This afternoon we shall define our attitude towards
this letter, and I believe that tomorrow morning I shall be in a position
to report to the Tribunal.

THE PRESIDENT: Very well. We will pass the matter until tomorrow
morning at the opening session.

Counsel for the defendant Krauch may continue with the presentation
of the evidence.

DR. VON ROSPATT, (Counsel for the defendant Krauch): In order to
conclude yesterday's presentation of documents with reference to the social
care of the Ghettoes, I should like to state that such care did not only
confine itself to voluntary foreign workers, but also was given to forced
laborers coming from foreign countries.

I am now passing to the commitment of concentration camp inmates in Auschwitz. This was ordered by Goering by way of a decree to Himmler, dated the 18 of February, 1941. The affidavit which is being submitted in that connection shows from whose initiative this order by Goering originated, and what Professor Krauch's attitude toward this problem was.

The affiant, Dr. Fritz Goernert, describes himself as the technical head of the Special Railway train which served as Goering's headquarters. He was often considered as Goering's adjutant, and, as a technician, he was vitally interested in all technical and clinical problems.

For that reason he was very interested at the time in the conversation between the then Reichs Minister Todt, and the Secretary of State, Dr. Syrup, concerning the construction of the Buna plant at Auschwitz.

These two gentlemen were waiting in the dining car of Goering's special train, and they expected Goering's decision with respect to the labor questions at Auschwitz. In that connection they mentioned that it was Himmler who desired that commitment in order to strengthen his influence on the economy and industry in this manner.

These two gentlemen, furthermore, stated that Professor Krauch insisted on constructing the Buna plant at Auschwitz with the help of the local population, and with additional skilled workers from Germany. Krauch, obviously, wanted to keep the Buna plant Auschwitz within the framework of all other I.G. plants even concerning the labor question.

Because of this controversy between Himmler and Krauch it was necessary to get Goering's decision. This document, 104, which I am offering as Krauch Exhibit 114 proves that Goering's decree, Exhibit No. 1417, English Document Book 72, page 39, was not issued upon Professor Krauch's initiative, but rather against his will. Beyond that, this document confirms the testimony of the witness Schieber.

As Krauch Exhibit No. 115 I am offering Krauch Document No. 81, an affidavit by Dr. Gerhard Ritter. The defense is submitting this affidavit in connection with the Prosecution's Exhibit No. 1513, English Document

Book 77, Page 86.

Exhibit 1513 of the Prosecution represents a letter by Pohl to Kranefuss, according to which Pohl informs Kranefuss that on the basis of the requests made by the Gobenham, they could put no concentration camp inmates at their disposal.

Dr. Ritter, the affiant, states in that connection, that these lists of requirements written by the Gobenham, were sent to authorities competent for the allocation of labor, and to similar offices in that connection. Since Mr. Kranefuss in his capacity as member of the Vorstand of the Grubag was in particular interested in all labor allocation questions in the field of mineral oil, and since he himself offered to use his influence with the labor allocation authorities, he had also received these lists of requirements of the Gobenham.

Kranefuss did not have a special mission to procure concentration camp inmates for the plant. Dr. Ritter, on the other hand, states that the Gobenham at no time requested concentration camp inmates. Kranefuss approached Pohl on his own initiative, with whom he had close connections as high SS officer.

As Krauch Exhibit No. 116, I am now offering the affidavit of Dr. Ferdinand von Soiron, as Krauch Document No. 42. This affidavit by Dr. Von Soiron also confirms that so far as concentration camp inmates were employed in the factories run by the Gobenham, such employment was not based upon the initiative of the Gobenham.

Krauch Document No. 96 I offer as Exhibit No. 117. It has the same contents as the previous document.

Krauch Document No. 19 is not being offered, because the affiant, Dr. Schieber, was already heard as a witness.

The next Document, Number 9, contains a statement by Professor Krauch's associate, Dr. Ritter, about the visit at Auschwitz, during which Dr. Ritter accompanied Professor Krauch. Dr. Ritter confirms Professor Krauch's testimony about the impression he received on the occasion of this visit.

I am offering this document as Exhibit No. 118.

The next document, Krauch No. 29, is considered important by the Defense in connection with the following questions:

One, with respect to Krauch's letter to Keitel dated the 13th of January, 1944, Prosecution's Exhibit 477, Document Book 22, English page 33. Ritter, the affiant, confirms that Krauch, as Krauch stated, did not himself dictate this letter. He furthermore confirms Professor Krauch's thesis that this letter is a sort of defense against the attempts to prevent this voluntary employment of firms and he finally confirms that for that reason, this letter cannot be understood to mean that Professor Krauch had developed some initiative with respect to the allocation of concentration camp inmates and prisoners of war, and that that did not hold true of Auschwitz either.

Two, this affidavit shows the motives which prompted Krauch to initiate the employment of Russian prisoners of war in industry.

I should like to ask you to accept this document as Krauch Exhibit No. 119.

Document No. 13 must be taken together with Professor Kirsch's testimony when he testified as a witness with respect to Kirsch's letter to Himmler dated the 27th of July 1943. Exhibit No. 1523, Document Book 79, English page 53.

This statement confirms that Kirsch did not personally dictate this letter, and moreover reveals the connection which prompted the formulation, which is stressed by the Prosecution, that Kirsch had welcomed the employment of concentration camp inmates for a new Buna plant.

Such a Buna plant as is shown by this statement, was not practically being discussed. It becomes apparent from this document that from the letter to Himmler one cannot conclude an initiative of the Ghetto with respect to the allocation of concentration camp inmates.

I ask that this document be accepted as Kirsch Exhibit 120.

I am offering Kirsch Document No. 31, as Exhibit No. 121. This document proves that the Ghetto's attitude saved 15,000 people who were to become concentration camp inmates, from being sent into the concentration camp.

The next three documents refer to the case which has been illustrated by Dr. Kirsch, of the allocation of concentration camp inmates at Schoenberg, Wuertemberg.

Document 23 shows that Kirsch had no jurisdiction over concentration camp inmates employed in Schoenberg, Wuertemberg, but that the entire construction project was subordinated to the Commander for rapid measures, Gailenberg.

This becomes apparent from the title, and I quote:

"Report concerning the discussion with respect to the working staff Gailenberg."

and furthermore, on page 5 of the document, you have an excerpt, "Arbeitsdienst", labor allocation.

The next documents, 36 and 37, confirm the detailed description which Doctor Kirsch made during the direct examination concerning his interference

on behalf of concentration camp inmates at the construction site Wuerstenberg. This is a statement by Freiherr von Krudener, who personally experienced Dr. Krensch's interference; and also a description by Dr. Leo Volk, the personal assistant of Pohl who in this capacity himself experienced Dr. Krensch's interference in their behalf.

Document 93 I am offering as Exhibit No. 122; Document No. 38 as Exhibit No. 123, and Document No. 37 as Exhibit 124.

This brings me to the end of the presentation of documents with respect to Count III of the indictment. Dr. Boettcher will introduce all of the other documents as soon as the outstanding document books will be returned by the administration in their translated and mimeographed form.

THE PRESIDENT: Dr. Boettcher, will this argument be suspended for the time being now, or do you have anything further that you wish to present at this time?

DR. BOETTCHER: Your Honor, I have nothing further to bring before you at this time. I should like to be permitted to present the other documents of Volume VI in connection with those documents which are still now being mimeographed and translated.

THE PRESIDENT: Very well.

Now, which of you counsel for the Defense wish to next present their case?

DR. SEIMUT DIX: I only have a request at the moment. I should be very grateful to you if my client, Dr. Schneider, be given the same opportunity as the defendant Andres. We also have an extensive field of work within the framework of Count III of the Indictment, and for that reason I should be extremely grateful to you if he could stay away from the Court for about a week. On those days when he thinks it is important for him to be present, he will be present.

THE PRESIDENT: With reasonable limitations, the Tribunal is very glad to grant those concessions. Of course we cannot excuse too many of the defendants, but as individual defendants wish to devote their time to the preparation of their defense which is in the immediate future, we will be

very happy to excuse them. Again your client will be excused on the same basis as Dr. Ambrose was excused.

DR. DIX: Thank you.

THE PRESIDENT: Very well.

DR. RUDOLPH DIX: Your Honor, Gentlemen of the Tribunal, I ask to be permitted to call Clemens Lammers as an expert witness into the witness stand.

THE PRESIDENT: The Marshal may bring in the witness.

DIRECT EXAMINATION

CLEMENS LAMMERS

CLEMENS LAMMERS, a witness took the stand and testified as follows:

BY THE PRESIDENT:

Q. Mr. Witness, you will remain standing for the purpose of being sworn. Please raise your right hand, say "I" and state your name.

A. I, Clemens Lammers.

Q. You will repeat this oath after me:

I swear by God, the Almighty and Omnipotent, that I will speak the pure truth, and will withhold and add nothing.

(The witness repeated the oath.)

THE PRESIDENT: You may be seated.

BY DR. RUDOLPH DIX:

Q. Mr. Witness, may I inquire of you if the use of the lights in front of you has been explained?

A. Yes.

Q. Very well.

THE PRESIDENT: The witness is with counsel for the Defense.

BY DR. RUDOLPH DIX:

Q. Mr. Lammers, you know that what we are talking about here, is being translated into the English language. For that reason I shall have to ask you to make a pause after my questions. I shall do likewise after your answers.

Would you please repeat your name, and then your place of residence?

A. Glemens Lemmers, Berlin-Charlottenburg, Witzlebenplatz 5.

Q. Mr. Lemmers, I have called you here as a witness in my capacity as defense counsel for Mr. Schmitz. Furthermore, I have called you here as an expert witness to speak on the following subjects: I shall put a number of questions to you with respect to this subject. Perhaps it would be advisable to state that the subject itself is the following: Did the leading representatives of German in particular and German industry in general, together with other associates, for instance the heads of the Military Agencies, help Hitler and the Nazis to power, having imperialistic and aggressive aims in mind, and beyond that, did these men basically contribute to consolidate such power, did they do so consciously and willingly, and in order to put into effect the same imperialistic and aggressive aims?

A. You said, "consciously and willingly?"

Q. Yes, I did. That is the subject about which I wanted to hear you and let me at first put the question to you. Do you believe you have the necessary expert knowledge for dealing with that subject?

MR. SPEAKER: Mr. President, the Prosecution has personally felt that in a number of cases Dr. Rudolf Dix has asked leading questions by, in effect, making a little speech to the witness about what his purposes are in advance. Now it seems to us that it really doesn't make any difference whether or not you ask a leading question or whether before you ask questions which are not leading, you in effect, in the courtroom, tell the witness exactly what you have in mind that he will say.

We believe that, at least in the courtroom, — which has nothing to do with respect to what discussions are held between Dr. Dix and the witness outside of the courtroom, of course, there he can tell him what his objectives are for hours on end if he so chooses, — but we think that in the courtroom, if the topic is relevant, the questions should be asked which are not leading, and that we can very well get along without such influence upon the witness as this type of introductory speech may have.

We also think it would save a lot of time if we could have that understood so we do not have to object constantly.

THE PRESIDENT: Very well, very well. Now this question is not leading, but it does call for a conclusion of the witness. In other words, if the witness had been asked as to whether or not he believes he is an expert in such, I am sure that it would have been much more helpful to the Tribunal. Dr. Dix, if you would have the witness tell us a little bit about himself, about his contacts, his experiences, his background, and then let the Tribunal determine for itself whether or not he is an expert, and how much weight we should give to his testimony, it would be helpful, and I think if you would have the witness tell us a little about himself, it would take a little more time than your question, but it would be more helpful than his own conclusion.

DR. DIX: Your Honor, I agree with you, and I was just going to put these questions to the witness which you have mentioned; however, I am not at all in agreement with Mr. Sprecher.

THE PRESIDENT: Well, let us not reargue that. Perhaps that matter about which he is apprehensive may never occur, and if it does we'll deal with it when it does. Let's move along. There's nothing really new to discuss before the Court.

BY DR. DIX:

Q I repeat my question if I have put it already. Otherwise I put it now: Do you believe to have expert knowledge for the treatment of this subject which I have mentioned? Do you believe that you have sufficient experience?

THE PRESIDENT: That does not need to be argued. The question is harmless, but it certainly is not helpful to the Tribunal; whether he believes he's an expert or not would not determine the fact that he is or is not an expert in the estimation of the Tribunal.

If you have the witness tell us something about himself, Dr. Dix, about his knowledge of the subject concerning which you propose to interrogate him, and we'll determine whether or not he is an expert and how much weight to give to his testimony. I think if you go directly to the testimony and let the witness tell us something about who he is and what his background experiences have been we'll be able to tell whether or not he is an expert and how much weight to attach to his testimony.

DR. DIX: I was just going to do that.

BY DR. DIX:

Q Will you please refrain from answering the question I have put to you, witness, but will you tell us something about your professional career, your entire life, and will you tell us about those things upon which you base your expert opinion for the subject which I mentioned before.

A I think the Tribunal is the one to decide whether or not I

am an expert on this subject.

My professional activity consisted and still consists of being counsel for industry and also legal counsel. If you like, I am an economist and lawyer. This activity has led me through many positions in life in the economic life, as well as in the political life. I started in Duesseldorf in the year of 1911 by giving individual counsel to industry. During the World War I was active as an officer and suffered serious wounds. As a seriously wounded officer I was assigned to the Raw Material Administration during the First World War, and there I was closely connected with general economic questions, and, in particular, questions concerning production. After the end of the war I had the desire to return to my civilian and individual profession as adviser and counsel. But the stormy times of the revolutionary transition of the years 1918 and 1919 still committed responsible Germans to their various duties, and upon the request expressed at the time, in particular upon request of the Reich Government, the first republican government we had in Germany, I stayed in Berlin in order to participate in the conversion from war economy into civilian life. The first step taken at the time was the pact between German workers and German employers, between social and Christian trade unions on the one hand, and the enterprises on the other hand, in November 1918. We called that pact the German Working Community. The counter-pivot against the revolutionary and ultra-revolutionary movements of right and left were formed by this union. At the time, since I was not in a position to reach the various members of this union throughout the country, because in November 1918 it was very difficult to establish communications with them, I had to sign for them, and I had to stand up for them. This, of course, brought about a great deal of criticism from industry, which did not like for one persons to assume so much authority in that respect and wanted to investigate these things minutely. I was not an industrialist, I was merely asked by the Government to be there in order to make

the best of that situation. I am merely mentioning that fact because it actually represented the starting point for my further functions and because therewith a bridge is formed to my later extensive, public activity which I exercised in Germany.

The great social experience of those days and hours of which I was speaking, one of the dark days of Germany's history built the fundament of my social activity. A great part of my economic activity served the purpose to maintain peace between the classes, and in particular peace between the employers and the workers. At first, to create it and then to maintain it, and then to develop it fruitfully for German economic policy and the policy of the country as a whole. After such committees of work had been formed, one set about to start organizing it. The German industry had its so-called head representatives, up to the beginning of the World War, divided into three organizations. These organizations were built up organically. One industry was the so-called heavy industry, dealing with basic materials, which had organized themselves into the Central Association of German Industry. Opposed to that industry was the industry of finished products, which formed the League of German Industrialists. Between these two organizations was the German chemical industry. It is important to state that fact, if one wants to understand the work of chemical industry during the later development. For that reason I permitted myself to mention these facts in this connection. Throughout the First World War, when Rathenau created the war economy, the Raw Material Economy, as it is well known, he was asked to become head of the Raw Material Economy, and it was he who created the Raw Material Office in war time. A request was made to industry that it should not continue to be represented by a number of leaders and associations, but that in order to serve the national purpose it should arrive at joint opinions and judgments.

THE PRESIDENT: Pardon me, Mr. Witness. I fear that the chair is more to blame than you for the situation that has developed.

Certainly we do not want to embarrass counsel, that is, in interrogating you, by having you testify in this manner as to things about he may specifically wish to ask you. What the Tribunal is interested in now, and that only, is to have a brief statement that will serve as the basis for the Tribunal to determine the weight to be given to the testimony which you are about to offer. We're more particularly interested, I may say, in you, than we are in the situation as it existed at different times, because that, after all, is what counsel will ask you about. If we may just have a very, very brief statement about your own experiences in more recent years, it will suffice for the time being. Thank you.

WITNESS LAMERS: I understand, Your Honor. What I have stated now concerned only the beginning of the situation. I am now passing to the results as they emerged from that situation. After the World War German industry decided to bring the entire war effort into the private economy. This was the purpose of these associations. In order to form the Reich Association, I was asked to participate as an expert counsel for organizational questions, but not in any leading position. The Reich Association, after its creation, formed the various boards. At the head there was a praesidium, and then there was a Vorstand, and then there was the main committee. The Praesidium had about twenty persons; the Vorstand forty persons; and the main committee from 200 to 300 persons. I became a member of that main committee. That was the beginning in the year of 1918.

As a result of being versatile in various fields at the beginning of 1922, I was taken over into the Vorstand of the Reich Association of German Industry, and therewith approached the second level. In the year of 1922 the Reich Association held its first big meeting in Hamburg. I was asked to hold the final summarizing speech, concerning the entire work of this large assembly. This speech I was able to give as a free man and as an observer, and I gave it spontaneously.

My main subject dealt with social questions, with which I was mostly interested.

THE PRESIDENT: Let us not go into too much detail. Just tell us a few of the more important positions that you held between 1922 and 1939, and that will be sufficient, witness. What have been your activities between 1922 and 1939?

WITNESS LAMMERS: The same activity which I have just been describing.

DR. DIX: One moment, please. Your Honor, may I make a brief remark? You were kind enough to say before that I was going to put questions. As far as I am concerned, I should not like to limit the witness in any way for reasons of saving time. I have questions, naturally, but if he can answer these questions, and if he has already answered these questions in connection with questions I don't have to put them to him again, and we can save a lot of time. On the other hand, I think it is quite advisable if he could tell us what the development was in connection, even if he does not anticipate, in the final analysis we should finish much quicker.

THE PRESIDENT: It is always dangerous to depart from the established procedure of questions and answers. It is an invitation to the witness, for which a witness cannot be blamed for accepting the invitation, when you let him talk without the restriction of questions and answers. And I think, perhaps, the witness has talked enough to justify your interrogating him, on the assumption that he is an expert. You may ask further questions that will bear upon his credibility and the weight to be given to his testimony; so with your permission, I must ask you to go ahead and interrogate the witness. We're satisfied to permit you to do that.

DR. DIX: Your Honor, I have to put a number of questions to him with respect to his expert knowledge.

BY DR. DIX:

Q. Will you please mention your political activity briefly -- the tendency of your political activity and, furthermore, your negotiations in connection with prominent politicians and economists abroad, and last, but not least, your special connections with I.G. Farben. I think that is necessary and will suffice.

THE PRESIDENT: Very well.

DR. DIX: There may have been a mistake in the translation, I think that is important. Apparently the statement was translated; "the activity between 1932 and 1939"; the witness said "1922 to 1939" which is a considerable difference.

THE PRESIDENT: Very well.

DR. DIX: Thank you very much.

THE PRESIDENT: The witness may answer your question.

BY DR. DIX:

A. I have to say that after this Famburg speech I was assigned to the Praesidium of the Reich Association of German Industry and therewith took my place at the head of this organization, together with the members of the other praesidiums. In order to be specific now, I was then active as a free legal and economic political expert, member of the Aufsichtsrat and I was a member of the Aufsichtsrat and Board in that capacity and was advisor and counsel of a number of enterprises. Agfa and Griseheim-Electron were part of these enterprises who were also mentioned in this Courtroom. These were two enterprises which later came into the I.G. by way of merger. As soon as the I.G. was founded I, therefore, entered the Aufsichtsrat of that enterprise. I think it is important to state that my position in the Aufsichtsrat of the I.G. was only one of many of my positions and that I was never in any employment relationship to the I.G. and that my activity as advisor remained unchanged.

In the year 1924 I entered the German Reichstag as a delegate of the German Zentrum Party to assume that position by the party leaders, because of my knowledge as an economic expert and because of errors from the years 1922 to 1924. I participated in the creation of the German Rentenmark. I belonged to the five men committee who laid the foundation for the German Rentenmark. Therefore, I was in the Aufsichtsrat of the German Currency Bank, and I was also asked to participate in the reparations negotiations as expert. There, in particular, I dealt with work concerning industrial obligations, according to the Dawes Plan. I worked on that plan in Paris, and I entered the Aufsichtsrat of the industrial banks, when the first intensive corporations for foreign economy came about, at the head of which was Mr. McGara, the representative of the United States.

THE PRESIDENT: Just a moment. Now, counsel, perhaps you'd better, in the interest of time, ask another question and try to continue the inquiry, insofar as you can, to questions that the witness can very simply answer. If you'll do that, please.

BY DR. DIX:

Q. Dr. Lemmers, you were speaking about your entry into the Reichstag as an expert or delegate. Could you briefly tell the Tribunal what the political tendency of the Zentrum Party was, and, in particular, the relationship of the Zentrum Party in the Weimar Republic?

A. The Zentrum Party was always the steady element in politics because it always maintained its strength and ideology, up to the beginning of the collapse, was based upon a Christian ideology. It was composed mostly of Catholic delegates; therefore, it was in compliance with my old religious and traditional teachings. This fact enabled me to accept the suggestion of the Party.

Q. The Tribunal may be interested in your giving quite briefly the names of commissions, and of political negotiations with foreign countries which were carried out by the Board, in which you participated.

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3. In the year 1925 I was asked, as a Reichstag delegate, by the Reich government, to represent the Reich during the initiation work at the League of Nations. I took over that position and afterwards represented the Reich throughout all industrial conferences, particularly in questions dealing with economy and industry, until the Nazis came into power -- particularly during the Brüning time.

Q. That is sufficient. Could you now briefly describe your connection with the I.G? You have already told us that you were in the Aufsichtsrat. You said that you were with one of the founders. Would you tell us what your tasks were with the I.G., and with what leading personalities of the I.G. you had particular contact?

A. The Aufsichtsrat formed a number of committees -- Kalle Committee, which had to do with political and economic-political questions; I became a member of that committee. Furthermore, there was the social-political committee, in which the representatives of the employees participated. I was also a member of this committee. From time to time special committees were formed for a number of important questions, and I repeatedly was assigned to be a member or to head such committees. A special collaboration in personnel questions resulted with the gentlemen of Geheimrat Duisberg-Bosch, Dr. Kalle, and a number of others, and I must point out that Geheimrat Duisberg, and Carl Bosch were already my colleagues in the Presidium of the Reich Association of German Industry, and they worked with me, in connection with general questions, also extending outside Farben matters.

Q. Now, let us jump over a little to another era and approach the time when the Nazis came into power. I recall a speech made in the year 1932, during some meeting of the Reich Association of German Industry, I believe, in Dresden, given by you.

A. I think you were the victim of some confusion. The speech in Dresden was in 1926. I myself held a speech in June 1932 in Berlin. I think that you meant the latter speech.

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Q. Would you please explain the significance of both these speeches from a political and economics point of view, but in particular the political point of view?

A. The Silberberg speech in the year of 1926 was the climax of the internal political activity of the Reich Association at that time. The delegate from the Rhineland, Dr. Silberberg, in the year of 1926, held a speech in which.....

MR. SPRECHER: Mr. President, for some purposes the year 1926 may not be remote in the inquiry which we are here conducting, but particularly since it is remote and if it is relevant at all to go into this extended and detailed history of this entire association of all German industry at this time, then we would like to suggest that counsel ask questions which suggest a more concrete topic so we can get to the heart of this matter, whatever the heart of it may be, and so far we don't see it.

THE PRESIDENT: Well, the Tribunal, rightly or wrongly, invited counsel to make some showing as to the qualifications of the witness to express what he calls expert views. That, I may say, has been well done. There is no occasion to go farther on the qualifications of this witness, generally speaking, as to his knowledge of the subject about which he has been called to testify. I think we have reached the stage now where you may, Doctor, get to the core of the matter and make your showing of whatever facts you think are pertinent to this charge about which this witness can testify. I think we're satisfied as to the fact that he does show sufficient familiarity with the subject with which he is dealing to permit you to use him for a witness for the purposes you have indicated, so if you will help us by directing the witness specifically to issues that you wish to develop, I think it will be much more helpful than to invite him to discuss a speech as remote as 1926.

DR. DIX: Your Honor, I agree with you entirely except for the last few words. I was at the beginning of the core. This speech of Silberberg in 1926 and the speech of Lammers in 1932 is the core of the attitude of industry and of the Reich Association towards the radical developments, the National Socialist development in the Reich. I have to put these questions.....

THE PRESIDENT: If you think it is important, we are certainly not going to deny you the privilege of attempting to make the showing, but if

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THE PRESIDENT: If you think it is important, we are certainly not going to deny you the privilege of attempting to make the showing, but if

you will please get the witness directly to the meat of the thing and if it is, in your judgment, necessary to go back to a 1926 speech, let's have a very brief and direct presentation with respect to it. I am a little apprehensive about it being a little remote, but if you think it is pertinent, you are, of course, competent to make your showing and the Tribunal will make its objection. Of course, there may be no objection and you can go right along.

BY DR. DIX:

Q. 1926 and 1932.

One moment. I should like to follow the rules of the President, but I expect that after having stated the purpose and the tendency of the question, the prosecution will not reprimand me for putting leading question. I have to steer the question and at the same time I must not be in danger of being accused of putting leading questions.

Mr. Lammers, as briefly as possible, the Reich Association, the representative of German industry, speeches made at the beginning of the "Battle Years" of 1926, and the speech made in the year of 1932, form a policy. This is the reason of my question.

A. The speech by Silberberg represented the first profession of faith of German industry with respect to the Weimar Republic. Therefore, it was estimated to that extent by the Weimar Republic at the time. I must only say that this speech had been prepared on the basis of the directives and policies which were set up by the I.G. Farben when it was founded. On the day I.G. was founded, Geheimrat Bosch had asked me to speak about the subject of what the duties of the largest German enterprise would be towards the state, towards industry and towards workers. These policies and tendencies were presented freely by me. They were unanimously approved by the administrative counsel and found their expression in the Silberberg speech.

Q. And now will you tell us something about the speech in the year of 1932?

A. I may take it that the general history of the fight for power

of the National Socialists is well known?

Q. Well, the Tribunal knows that in the year of 1932 the most violent part of the fight was going on.

A. I was present during this battle in the Reichstag, from the year of 1924 to the year of 1929, and because of the form these fights took, I resigned from the German Reichstag in the year 1929. In the period thereafter, however, I was able to witness this fight for power in many fields. Particularly in fields of economic politics. I must mention that under the Brüning Government I was one of Brüning's closest advisors in the internal political and economic field and, consequently, was well informed about the intricate fight for power. I was informed about that perhaps more extensively than the man in the street, and most of German business men must be included as belonging to the "man in the street".

THE PRESIDENT: Just a moment, please. Counsel, if we keep this examination within reasonable limitations of time, it's going to be necessary to have your help and cooperation and can't you please direct this witness to the matter of which you stated that it was the purpose of his testimony, and that is, to show the attitude and disposition of the Party Government toward industry in general and Farben in particular? We don't want to place too many limitations or embarrass counsel, but this matter is getting to the point where the President of the Tribunal just must insist that we get down to the meat of this thing now. We have had very very great difficulty getting out of the 20's into the 30's and now we find ourselves going back. Now, please ask the witness the fundamental questions that you want to develop by him and see if you can't move this thing along. We have consumed three-quarters of an hour and we haven't gotten very far yet.

DR. DIX: Your Honor, certainly I shall do that.

THE PRESIDENT: Very well.

DR. DIX: But it is the core of the question and the charge whether or not industry and the I.G. Farben helped the Nazis to power. I have to ask him about these things.

THE PRESIDENT: Now, if you will get to just that point we'll have no trouble. Let's get beyond where we seem to be requiring time in rather remote historical facts. If you will come to the point, to the question of the relation between the Nazis and industry, in general, and Farben, in particular, we'll get along.

BY MR. DICK:

I was just going to do that.

Q. Witness, during this meeting in the Reich Association in the year of 1932.... Let me phrase my question differently. Was this meeting of the Reich Association a meeting of industry and, there with, the I.G.?

A. It was a meeting of the main committee of the Reich Association of German Industry.

Q. That is sufficient.

The speech itself, Mr. President, I shall present as a document.

You don't have to say anything about it. I shall only ask you one thing. Was this speech a definite declaration of faith in the constitution of the Weimar Republic and was it an absolute declaration of war against the Nazis and a warning to the German people with respect to the development the Nazis were causing?

A. Fidelity in the republic was a matter of course and, therefore, was not particularly emphasized. The speech rather was an analysis of dangers threatened through the National Socialist movement in the economic and political field and it was a severe declaration of war and psychologic rejection of National socialism. I illustrated the situation as it was....

THE PRESIDENT: Just a moment, please.

Counsel has indicated that the speech will be made an exhibit in this case, and, under the circumstances, we should not be asked to listen to an analysis of the content of the speech.

Please ask another question, counsel, and let's get along.

BY ER. DIX:

Q. In connection with the question as to your special expert knowledge, after the year of 1945, after Germany's collapse, were you asked by the Allies to assist them? ⁵⁶²

A. Yes, to a considerable extent.

Q. Did you, in particular, have anything to do with the Hoover Commission and President Hoover?

A. For five days I was asked to assist in the negotiations.

Q. Were the written statements which you made in connection with these problems given to Hoover for his archives?

A. Yes. In particular, with respect to the subject I am speaking about here, the attitude of industry during the critical period. That can be found in the archives.

Q. Now, let us go on to the year 1933. In the year of 1933 did you leave your professional and political positions?

A. On the 5th of May, 1933, I left my position as member of the Presidium of the Reich Association of German Industry by making a severe and firm statement to Krupp von Bohlen.

Q. Why did you do that?

A. Very serious fights were going on with respect to the attitude of German industry during that time, a time when the new Reich Government began its activity. The Presidium, during three Presidial meetings expressed opinions in that regard. The most decisive resolution, which was unanimously adopted in the Presidium and which confirmed its attitude, was written and laid down by me. In this resolution it was expressed that Mr. Krupp von Bohlen was receiving authority to establish contact with the Reich Government in order to begin to conduct negotiations about the future development of the industrial economic conditions which Hitler, during that meeting of the year of 1933 and not 1932 as it was unfortunately said in the press.... Well, I had to negotiate with the Government.

Q. Mr. Lammas, I believe that will suffice. You don't have to go into details.

A. I resigned from office, because Dr. Krupp von Bohlen, contrary to this formal authority, had concluded an agreement with the Reich Minister of Economics Hugenberg which threatened the freedom of the Reich Association of German Industry in a way which was not tenable for me.

Q. I think that will suffice.

Was the leadership of the Reich Association in a very difficult situation at the time because of the conflicts of duties which existed, on the one hand, towards its duties to the members and, on the other hand, towards its conscience?

A. At the time it had not reached the greatest extent and the greatest inner conflict had not yet come about. These questions were of a tactical nature in the sense that industry wanted to preserve free possibilities of negotiations with the Reich Government as it was promised to me by the Reich Government on the 20th of February.

Q. Did they succeed in the course of time? Did they succeed in maintaining their freedom?

A. No. May I give you the reason for that?

THE PRESIDENT: Just wait for a question, witness.

BY DR. DIX:

Q. Why?

A. The Reich Association for Industry was a democratic association with free and collective resolutions. The National Socialists, in all spheres and also in the sphere of industry, established the Fuehrer principle, the leadership principle. This was an untenable thought for free industry. It was quite untenable that such a principle be accepted at the time. In spite of that.....

Q. I don't think that the details are necessary.

Wasn't it extremely difficult at that time for a representative and responsible head of industry to arrive at any long range satisfactory decision, especially considering the fact of the authoritarian powers who interfered with physical and mental considerations?

Would you please describe to the Tribunal how, at the time, the heads of the church defined their attitude towards National Socialism?

A. With respect to the first part of your question, let me say that at the time it was not at all possible to arrive at any long range specific attitudes about the practical development. When discussing these questions, Mr. Fritz Thyssen attacked political catholicism as well as the church. He thought he had a right to do that because he himself was a Catholic. He asserted that the Catholic Church was going to excommunicate Hitler. It was a paramount interest for every German, and also for German industrialists, to know what the attitude of the church was at this stage. Consequently, I wrote to Cardinal Schulte of Cologne, who was a personal friend of mine, and I received from him, by return post, a handwritten letter.

THE PRESIDENT: That would hardly be pertinent to any issue with which this Tribunal is concerned. Perhaps, counsel, you had better try to limit the witness's testimony as to the relationship between Farben or industry, on the one hand, and the Government, on the other.

DR. DIX: Mr. President, I ask you not to be too severe with me. If one wants to really understand the attitude of industry at the time, one deals with a very complex question and, in my opinion, it is absolutely relevant, in order to arrive at any judgment, to establish how the important intellectual circles like the church, were acting at the time, because such attitudes impressed the industrialists to a considerable extent. The subject has now reached its most difficult point and the most important point, which is to bring you to a proper evaluation. You cannot properly evaluate the acts of individual persons if you do not get a correct picture as to what the situation was, at the time. I think that, in the interests of the search for the truth and justice, I must ask you not to put too many limitations upon me. I ask you for indulgence because, otherwise, it would be

impossible for me to explain to the Tribunal the attitude of industry and the I. G. Mr. President, it is not my fault that things have gone into such depth. I don't have to repeat the words the prosecution has said about the foundation of its indictment. It is my duty to illustrate the incorrectness of this theory. I am quite clear about having to tax the Tribunal's patience to a greater extent than somebody else who, perhaps, has to deal with a specific technical field, but I think that it is absolutely necessary for us to go into some depth in connection with this subject. I can guarantee you that I will limit myself to the main subject.

THE PRESIDENT: We certainly do not wish to be, and I believe that we have not been, impatient with counsel or trying to impose too restricting limitation, but when we get into the field that the witness undertakes to detail to us some controversy between government officials and the church and then is about to read to us some correspondence of his between some official of the church and himself, I am constrained to think we're quite a little far afield at that point.

It's three minutes before our regular recess. We're just about to rise, and we'll ask counsel to survey the situation during the recess and undertake, if he can, to try to hold this examination within the confines of the issues with which the Tribunal is most seriously concerned.

We'll rise at this time for our morning recess.

(A recess was taken)

THE MARSHAL: The Tribunal is again in session.

BY DR. RUDOLF DIX:

CLIMENS LAMMERS (resumed)
DIRECT EXAMINATION (Continued)

Q Dr. Lammers, before the Nazi tide of distress after Hitler's seizure of power, before you approached the church dignitaries, did you talk to anyone in the Reich Association, Reichsverband, about the matter?

A Yes.

Q Witness, you can always tell whether the translation is finished.

A I shall try to watch that.

A Especially Geheimrat Bosch and Dr. Buecher.

Q And what answer, just in general outline, did Cardinal Schulte give for the church?

A The answer was --

Q Very briefly, please.

A Respecting the new situation brought about by the Reich Chancellor in the Reichstag, the Episcopate, that is the bishops, were trying to remove the tension between the church and the National Socialism as much as possible. The Cardinal referred to Hitler's statement in the Reichstag of 23 May, at which time he said that the National government sees in the two Christian denominations the most important factors for the maintaining of our national individuality and would respect the existing agreement.

Q Did this answer of the Cardinal impress your colleagues in industry at that time?

A It caused them great worry.

Q Just a moment.

A It caused them worry.

Q Now witness, at that time, from the point of view of economic policy and politically, who was in charge in I.G. Farben? Who was the exponent of this factory?

A Primarily Geheimrat Bosch. Also Geheimrat Duisberg and Dr. Kalle.

Q Did they agree with you?

A In these questions absolutely.

Q The attitude of Fritz Thyssen and Kirdorf has frequently been discussed here. Was the position of these men in any way a prototype of industry as a whole or of I.G. Farben or can one call them political individualists?

A Within the Reich Association of Industry, — that is the Presiding Council of the Reich Association of Industry — they were quite isolated cases. The efforts of Mr. Fritz Thyssen to have what he called, understanding for National Socialism among the leaders of industry, encountered indifference everywhere and most of the gentlemen did not realize the importance of coming events. Kirdorf never belonged to our committees and never attended any of the discussions.

Q A book has been published now entitled "How was it possible?", "Wie War Das Moeglich?" by a certain Kurt Saeche. Do you know the political attitude of this man?

MR. SPEECHER: The book, as counsel just said, in any event, has just been published and we are now being asked about the political direction or ideology or tendencies of this author. I can't see how that could be relevant regardless of what the ideas of that author might be. It's a post collapse book. The witness has some question of relevancy with which he can answer, then he can answer himself without the aid of some book written after 1945.

THE PRESIDENT: It's difficult to see how the matter of the book would be of any interest to the Tribunal or to counsel in this case. But the question wit in itself is very direct, very simple, and calls only for a yes or no answer. The witness has been asked if he knows the political ideology of the author of the book. He can answer that yes or no and it will do not harm. We will let him answer it and he will please answer it directly as to whether he does know the political

views of the author of the book.

A Only from the book itself.

THE PRESIDENT: That is an answer.

BY DR. RUDOLF DIX:

Q I shall present parts from this book in the documents and for the sake of brevity I shall ask the witness merely as follows. It says there "The widespread conception that German industry supported the Hitler party is objectively false. That is legend to an even greater extent —" and the rest is of no interest. Now, my question is, do you agree with this idea? This question is asked for the sake of brevity.

MR. SPEECHER: The prosecution can't reply to this last point as to what the objective really is, but Mr. President, we do believe that this is an effort to build a foundation to get in what counsel knows is improper material. Books of opinion written after the year 1945 by persons within Germany are certainly not competent, and Dr. Dix by this time, from his long experience here, must know that and we object to it.

THE PRESIDENT: We are not presently concerned with the book. It is not before the Tribunal. Counsel has said that he proposes to offer excerpts from it. We will pass on the admissibility of the excerpts if and when they are offered. Now that being the situation, it would hardly be proper to ask the witness whether he agrees with the author of the book. Why not ask him directly, Doctor, whether or not it is a fact? You have qualified him as an expert. Ask his opinion about it and give us the benefit of his own testimony independent of the book.

BY DR. RUDOLF DIX:

Q Is it a fact that this idea is a legend?

A The idea that German industry, especially big industry, as a whole supported Hitler in his seizure of power, is a legend — supported him as a whole. This book, Mr. President, was published in Switzerland —

THE PRESIDENT: We care nothing about the book. We want the facts.

You have testified as an expert that there is no foundation in fact, in your opinion, for the conclusion that industry supported the Nazi regime. Now, that is an answer and that is before us for whatever it may be worth. Go ahead.

BY MR. RUDOLF ELIX:

Q. What was the attitude of German industry on the average, as a whole, especially the men of I.G. Farben, toward the question of a war? Was the attitude basically opposing or aggressively pro-war?

A. According to my observations there is no question whatever of a pro-war attitude. Facilities can mean absolute denial of all war. Of course in the case of an attack on Germany, German industry, which I assume would include I.G. Farben, would have done its duty.

Q. Was there also compelling economic reasons for this attitude of industry including Farben?

A. Yes, in the speech of Jans which has been mentioned, I explained these reasons. They were based primarily on the world wide export contacts, especially of chemistry and electric techniques, which essentially was interested in preserving profits based upon a normal international trade.

Q. It is asserted that the war profits of industry, including I.G. Farben, made the industry favorably inclined toward war. Is that true?

A. I can not answer for German industry as a whole. As for Farben, I can answer the question in the negative with a clear conscience, War profits were of no interest to Farben.

Q. After the first World War and especially in the time before the second World War, did you meet men or women in Germany who wanted a war or were well disposed toward one?

A. I can only say that perhaps such people may have existed in the Nazi camp, but that I never had any personal connection with such people. Our entire efforts were directed to the opposite end,

Q. Upon the outbreak of war in 1939, did you have a general impression of the attitude of the population where you happened to be at the time and, if so, what was the impression?

A. I was living in Berlin. Observations in a large city are difficult. In the circles which I was able to observe I saw regret and great inner resistance, and I heard that women especially were much opposed to the transport of our troops to Poland and tried to stop them in the railroad stations. I heard that; I did not see it myself, but it was a general report in Berlin.

Q. What was the general impression after Munich, in 1938, when the danger of war was averted--or seemed to be averted?

MR. SFRUCHER: Mr. President, we suggest that that is awfully general, and it doesn't give us any chance to anticipate a prepared question, which may be very objectionable, where Dr. Dix knows what the answer is going to be. It is so general we don't have any idea of the topic, the impression.

THE PRESIDENT: Well, that might be technically objectionable. If counsel will reform his question to conform to the formula that was used by the Prosecution, we certainly permit the question to be answered; and that is: What was the state of public opinion in Germany, generally speaking, at the time? Counsel, I suspect, technically, that would be a better form in which to state the question.

BY DR. DIX:

Q. What was public opinion in Germany after Munich?

A. As far as I was able to observe, there was enormous relief and a spontaneous feeling of gratitude toward Chamberlain. I know that my own wife asked me: would it be all right if I wrote a letter to Chamberlain and thanked him?

Q. Now, the question of the so-called consolidation of power. Will you speak about the so-called Enabling Law?

A. The fact is often overlooked that this Enabling Law merely

supplemented the first law. That was called: "Law for the protection of the people against treachery" or whatever it was called which was issued immediately after the Reichstag Fire. This law repealed the basic rights of the German citizens, personal liberty, property, secrecy of the mails, etc. The Enabling Act was to be a sort of legalization of a condition which in practice already existed. Therefore, there were difficult political struggles revolving about the Enabling Act. And especially as I know from his own mouth, the leader of the Zentrum endeavored to have the "Law for protection against treachery" reduced in its effect respecting the rights of the citizens. Hitler had explicitly promised to make these changes and they had been drawn up in writing. On the date of the vote, the written confirmation had not been received by the Reichstag. The head of the Zentrum, Reichskanzler Brüning, twice asked Frick for this written confirmation. Frick said that it was ready in his office with Hitler's signature. Thereupon, the Zentrum voted for the Enabling Act. After this vote the matter of confirmation was never delivered. I have this statement from Reichskanzler Brüning.

Q. This tribunal knows that this promise was not kept. I ask you, as an expert, what was the German industrialists--what were these gentlemen to do in the conflict of the decision to emigrate or to remain and to do this work? Please describe your observations at the time.

MR. SPEECHER: Objection.

THE PRESIDENT: What is your objection, counsel? Is it to the form of the question or to the substance?

MR. SPEECHER: Well, it is, first, to the form, and I think that there might be an objection to the substance, if I could really figure out what the real purpose is by a proper question.

THE PRESIDENT: There is probably some merit in that, Doctor. Can't you reform that question in order to make it a little more direct and to disclose the purpose of what you are trying to accomplish? It is a little bit obtuse. I am not sure myself as to what you are seeking to produce by that question, or tell me, what is your purpose?

BY DR. DIX:

Q. From your point of view, do you have any moral accusation to make against an industrialist who did not emigrate but continued to do his work? And in your opinion and according to your knowledge, what were the motives of those industrialists who remained at their plants although they innerly rejected National Socialism?

THE PRESIDENT: Objection is sustained to that. Counsel, why don't you just ask the witness what choices were presented to an industrialist because of the situation he was in. What might he have done? The different things he might have or might not have done? That will get us the information that we want here. If you will, pardon us for making a suggestion, trying to tell you how to interrogate your witness.....

DR. DIX: Then I shall ask this question with the addition, if I am permitted.

BY DR. DIX:

Q. Why did these gentlemen and others decide to remain and to continue to do their work although they were innerly opponents of National Socialism?

Is that all right? (To the Tribunal).

A. At the period of time about which I have been asked and which I experienced in a leading position, the question was not ripe for decision. Nobody knew at that time where we were going. The struggle of German industry was about the legality of the farther management of everything, politics and economy. The Enabling Act was passed but it was not yet known in what direction and to what extent National Socialism would make use of these powers.

MR. SPEECHER: Mr. President, I think that we are wandering into many fields and that there is no direction to the examination at this point. I thought the President suggested a question along the line as to what the choice was, and now we are getting a long history which is one man's point of view concerning what the general feeling was, about what the Enabling Act meant, and a lot of things like that.

THE PRESIDENT: Pardon me, Dr. Dix, do you have any objection if I try to propound the question that will produce the evidence that we think would be competent. Very well.

BY THE PRESIDENT:

Q. Mr. Witness, in view of the situation as you have described it, what choices of conduct were industrialists present with at the time that you are testifying about? What could they have done? Can you answer that?

A. Yes, I can answer it by saying that he had the choice which corresponded to his own inner attitude and conscience. The consequences which would have resulted from his choice he could not yet judge at that time. The choice itself was quite open in every way.

Q. Did there come a time when he could have known what the consequences of his conduct would be in advance?

A. In general, no, but, Mr. President, may I humbly suggest that you ask what consequences he might have been able to expect for himself or for public life for the nation? Do you mean his personal consequences for his own person?

Q. You answer as you think it should be answered.

A. The consequences which would have resulted for the general public could not be foreseen with certainty by anyone, as the decisions of a dictatorship cannot be foreseen, since they merely serve temporary expediency. The consequences for the individual arising from his attitude, of course, differed at different times. In the beginning they would probably have meant removal from office, a prohibition of any activity which was possible on the basis of the Enabling Act. Then the consequences increased until it meant the danger of suffering death at the most minor refusal. After the National Socialist so-called legislation had extended the death penalty which had originally been provided for three cases, extended it to forty-nine offenses...

THE PRESIDENT: That is a sufficient answer. I hope, counsel,

that has been helpful to you. It is offered for that purpose. Now, go ahead on your own interrogation.

BY 77, DIX:

Q. Mr. Lammers, what was the attitude especially of Farben on the Jewish question?

A. May I make a general observation? You asked "Farben." That means that there was automatically a completely uniform and harmonious attitude of all the important men in Farben. One can never say that. All these people remained individuals. They were intelligent persons and had to create their own attitude. The question can only be what attitude did the management of Farben hold and what do you mean by management. Only in this way can you ask the question. Farben was a corporation, including thousands of people. Therefore, one can never speak of "Farben."

Q. That is what I meant.

A. May I continue? May I continue, Mr. President?

THE PRESIDENT: Yes, surely. That is your answer? Go ahead with your answer, please.

A. I personally, in these critical times, had contact with men of I.G. Farben only in the most intimate circle where we discussed such basic questions. I had resigned from all my official positions in industry in protest against developments. Also, I was put under public indictment by the Nazis which impaired my freedom of action, especially since my passport was taken away. But the leading men of Farben, headed by Geheimrat Bosch, just because of my political persecution drew the conclusion that they could afford especially close contact with me on basic questions. Individual questions: what Mr. so and so was to be protected, especially in the Jewish question, were not discussed with me. Perhaps the Weinberg case...but on basic questions there was a regular exchange of opinion, especially with Geheimrat Bosch. And I can only say that, judging from human, political points of view and his attitude toward war, Geheimrat Bosch never, at any time, and I was in touch with him until shortly

before his death—never did Geheimrat Bosch's attitude change in any way. On the contrary, Bosch's opposition to events often became so temperamental that he worried his friends since he was not afraid to speak even in public places, and he might have endangered his friends, and perhaps myself—but I did not care — I was persecuted enough. Bosch suffered enormously under this development. He was deeply pessimistic shortly before his death.

1. If anyone had been able to hold a pro-Semitic speech or publish a pro-Semitic writing, would the effects of such a speech, in view of the mentality of the National Socialist Government, have been good or bad for the Jewish population of Germany, according to your experience.

MR. SPEECHER: Objection—speculative.

DR. DIX: I withdraw the question.

BY DR. DIX:

Q. Now, Mr. Lassare, until what time were there free elections for the parliament, Reichstag in Germany?

A. Before the so-called seizure of power, the last elections were in November, 1932, if I remember correctly. I believe it was November, 1932. Up to that time one can say that the elections were essentially free.

Q.- To what classes of the population, according to your experience and opinion, did the enormous figure of votes for Hitler, in November 1932, and even more, in the election of the spring of 1933 belong?

MR. SPRECHER: Mr. President, this is borderline. It seems to me it is exceedingly remote. The very number of votes which were cast for various parties, which are before your Honors, indicate that support had to come to all the major parties from fairly wide sections of the population. But if this witness were allowed to go into his view of how many middle-class votes and how many trade union votes and how many people who were not in the trade unions voted for Hitler, how many of the industrialists and how many of the sewing machine people, and so on, I think we wouldn't be getting very much help. And if it is relevant, then the Prosecution would be in the position of having to call some people who I would be rather surprised if they wouldn't disagree with what this witness would say concerning that subject. I don't think it is particularly a subject where an expert opinion would be helpful to you.

THE PRESIDENT: Well, now, counsel, I seem to recall the Prosecution offered a testimony to the effect that it was the financial contributions of Farben and the defendants that made possible the ascendancy to power of the Nazi Party. Now, assuming that is the state of the record so far as the Prosecution's evidence, certainly these defendants are entitled to show that the success of the Nazi Party was not due to that but was due to some other movement, to some other group of citizenship. In order to meet your proof, certainly we are not going into the question of how many sewing machine agents supported the Nazi regime. But, within reasonable limitations, it is the view of the Tribunal that the Defense are entitled to make their showing as to who in their opinion were responsible for the success of the Nazi Party. Don't you think that is true?

MR. SPRECHER: Mr. President, I think the General topic is relevant but we are talking about the free elections of November, 1932, now.

THE PRESIDENT: Well, now what I have said is in order to advise counsel of the views of the Tribunal, and if counsel will keep in mind what the views of the Tribunal have expressed, with reference to what you might be entitled to show, we are going to sustain the objection to your present question because it is not in proper form to meet the standards of what the Tribunal thinks might be competent. In other words, you may ask the witness, if you will ask it directly, whether he thinks that it was the industrialists of Germany in general -- Farben in particular -- or some other group that was responsible for the success of the Nazi Party. Then you will be within the framework of the evidence that was offered by the Prosecution.

DR. DIX: Mr. President, I did ask this question and it was answered, but I believe someone that claims the right that he is not guilty, that his conduct was not a causative act in this seizure of power is obligated to explain what reasons were causative.

THE PRESIDENT: That is exactly what we are holding. We are saying that it is proper for you to show who is responsible for the success of the Nazi Party, but we are sustaining the objection to the form of your question.

Now, if you will get within the general scope, and confine your inquiry as to who, in the opinion of this witness whom you have brought here as an expert, was responsible for the ascendancy of the Nazi Party to power, this Tribunal will permit the witness to answer the question. And you may be specific, if you wish to, as to whether or not industry generally, or Farben in particular, is responsible for that regime; we think it is proper.

BY DR. DIX:

Q.- Then I shall ask this. In what social classes of the German population is the pivot and fulcrum for the election of 1932 to be found?

A.- I didn't understand your question.

Q.- Where is the center of gravity?

A.- I cannot give you any figures for that. I am an advocate of secret elections. I do not know how even my neighbors have voted. I cannot give you any figures. I can tell you about the development of attitudes more or less from events in the German parliament and partly from observations, and there we can say the following. Among the political parties, without any doubt, socialists and the Zentrum and their followers, and the Democrats of course, as the election results showed, up to the seizure of power. The uncertain factor was the so-called political driftwood, that is, the radicals who were willing to use any means to change the existing conditions, the status quo: Of normal Democracy, and with various final purposes in mind. For instance, Communists and National Socialists who fought in the streets — but in Parliament they always collaborated in sabotaging parliament procedure. How often did we delegates have to take a taller vote etc, because of protests about votes and so forth which were put in merely to prevent the orderly work of the parliament! And that was shown in the elections. In my opinion, the electorate varied according to political fluctuations.

The middle-class was very much afraid of National Socialism, and the middle-class certainly includes German industrialists. At least up to the seizure of power when there were still free elections German industry and the boards of directors of industry officially were carrying on propaganda for the middle-class party alone.

Q.- Would you agree with an assertion that the center of gravity of National Socialist electors in these elections was in the so-called lower middle-class, but also in the working class, numerically?

A.- The center of gravity of the electorate, of the electorate tendencies, depended on the bitter misery of the people. The middle-class was decimated and forced against the wall. Six millions were unemployed and now there were promises in every field: full employment, socialization.

On the other hand, free enterprise. The whole program was like a variety show-- something for everybody. They could pick out what they liked, and a large part of the simple people voted according to this program. If we could believe Hitler, who at a Party rally expressed his thanks for the masses -- I don't want to be impolite to the ladies who are present -- but he said that he owed his rise to the women.

(Witness) German women object to this, but certainly many women, for instance small farmers, who saw how their husbands suffered, thought they saw, according to the propaganda, a Savior before them. I myself, in the country, in Hesse, Hitler's picture hung on the wall, and two candles burning in front of it, just like an icon in Russia, or a religious shrine in other countries.

But personally I could not make a numerical decision about those matters: that really is not possible.

Q. Mr. Lambers, that was as to the causes for the seizure of power. Now I would like to go on to the consolidation of power. If I mention the words, Occupation of the Rhineland, Consolidation of industry and military service in Germany; Naval agreement with England; incorporation of the Sudetenland, Anschluss of Austria, etc. Did these events bring forth among the German people the impression of great political and personal successes of Adolf Hitler, and did they, therefore, lead to his consolidation of power in the will of the population?

A. Yes, that is a matter of course; the masses follow success, they cannot judge the intrinsic value of the success.

Q. Could the Republic of the Weimar Government have the opportunity of giving similar foreign political successes, - visible successes to the German people?

A. Will you repeat that please?

Q. Was it possible for the Weimar Government to give the German people similar successes for foreign policy?

A. No, not similar success. The success of the Weimar Republic was achieved in silent battle, and were to have their external expression only when the final decision had been made. I recall the saying of Erasmus, "100 meters before the goal"

Unfortunately, the stages in reaching this success of the Weimar Republic were unfortunately not so evident externally as we all wished who were intensively collaborating in the rise of this Republic and who wished for its success fervently.

Q Is it true then, that no successes visible to the German people occurred under the Weimar Republic?

A I believe, Dr. Dix, you cannot say that. If, for example from the Brüning period, you say that Brüning's visits to various places were in the form of negotiations, and changed from the former stage of being limited to certain regulations which had resulted among the Allies without German cooperation, at this time we had developed an open and friendly exchange. A person who has experienced this like myself, in a personal talk with McDonald, knew what enormous influence had the fearless, honest and frank cooperation which was beginning then. Such a one knew something of the successes which had ripened, but the people did not.

THE PRESIDENT: That answers your question, counsel. Ask another question.

DR. DIX:

Q In the Nazi time we had a constant chain of honors from abroad by the visit of prominent statesmen, prominent economists, and so forth. Was this the case under the Weimar Republic?

A I do not know whether one can speak of "honors". If a diplomat makes a state visit, he has, perhaps, performed a bitter duty. The effect is that the activity of the German government was made clear to the German people by such visits, much more than was the case in the time of the Weimar Republic, but I might recall that in Briand's time some other gentlemen visited Berlin, even if the extent of these visits was hardly comparable to the later visits.

Q Now another subject. In the course of the developments during the Nazi period, was the individual industrial enterprise, specifically Farben, still master in its own house under the Nazis?

A No, no German enterprise was.

Q Why was that?

A First of all because of the compulsory, planned economy. Later, increasing state intervention, which affected not only the management

of the plants, but also was expressed in numerous production orders which were orders of the Government. Failure to fill these orders might have fallen under the subject of punishment which I have mentioned.

MR. SPEECHER: Mr. President, I have no objection to the last question, but we have not had any foundation as to what this witness did after 1933 which would make him qualified to answer. I have no doubt that perhaps he is qualified, but I have not heard it.

THE PRESIDENT: Well there has been some showing as to qualification of his knowledge of conditions, his association with executives of Farben, even some official connection at different times. They may be near or far from the time under inquiry, but the objection under the circumstances would go to the weight that the Tribunal would attach to its evidence, and not to its competency.

The objection is overruled.

BY MR. DIX:

Q Did the business man not become more and more of a government official?

A Yes, in the sense that he had to follow instructions of the state and carry out orders of the state.

Q Were there not certain attempts made by industry to offer resistance on certain questions?

THE PRESIDENT: That is quite leading, doctor. What counsel wishes to know, Mr. Witness, is: what, if anything, did industry do to resist the orders and directives that were issued to it by the Nazi Government.

THE WITNESS: Is that the formulation of the question, Mr. President?

THE PRESIDENT: Yes, I think that will be calculated to get us to the point.

THE WITNESS: It is beyond doubt that for various motives, industry endeavored to ward off as far as possible the consequences of the increasing compulsory economy of the state and trend toward war. This was done at first under certain technical pretext. For instance, saying that a plant was not suitable for this or that purpose; that the

financial and other prerequisites were lacking, but the Nazi state followed up these objections logically and removed them by state intervention; for instance by supplying the funds, by forcing the funds upon industry, by supplying materials, technical aids, etc.

So far as basic matters of the Nazi government are concerned, I was able to observe this struggle in the remaining organizations of industry, after speaking of the plants. I may add something about the organization. These orders were coordinated gleichgeschaltet as the term was. People were put at the head, of whom the National Socialists assumed that they would pull their weight in the right direction and who had the unpleasant task of putting ideas and decisions of the Government into practice by making them plausible to industry, or forcing them upon industry, depending upon the circumstances.

I saw frequently that the members, and especially the outstanding members, of such organizations, in addition to the official meetings where the commissar representatives of the Government were also present, met in addition to these official meetings to deliberate as to how extreme measures could be avoided or combatted, but every individual case shows its individual factors, of course.

Q Various questions have been asked here about the attitude toward Hitler's book "Mein Kampf," in which autarchy plays an important role. Now, were men like Bosch and his colleagues advocates of autarchy?

A They were most violently opposed to it. I may remark about the speech of the 20th of June, 1922, which was about this point. It was against the possibility of autarchy, and was held in close collaboration with Farben.

Q The Grossraum Policy, the expansion toward Russia, was propagated in place of simple trade relations by way of export; what was the attitude of the Farben men on this question?

A According to my observations, there were at most three or four leading members of industry who had read this work until the overthrow of the Government. All attempts of Fritz Thyssen to give it to us as a

present were rejected. There was often a question of taste involved, the men saying, "We cannot even read this horrible Garmen," but the opinion that everybody in Germany had read the book and made these ideas of Hitler the subject of their own inner deliberations, as the basis for practical decisions, that would be a misconception. Unfortunately, these things were not taken seriously enough, early enough.

THE PRESIDENT: Thank you. Counsel we shall rise until one-thirty.
(Tribunal in recess until 1330 hours)

AFTERNOON SESSION

The hearing reconvened at 1330 hours.

THE MARSHAL: The Tribunal is again in session.

DR. RUDOLPH DIX: Excuse me, Your Honor.

Your Honor, I have put a few questions to the witness about the causes for the Nazi accession to power, and the consolidation of power. It is impossible to exhaust this subject in detail during a courtroom session, and I therefore ask your permission to put a few summarizing questions to this expert witness in order to find out whether I understand him correctly.

Q. Mr. Lamers, when Hitler seized power, was he a man, a demagogue who came up from the masses?

A. Yes.

Q. Is the consolidation of his power to be credited to a specific support by industry, and particularly the IG?

A. If by, "specific," you mean an absolute participation, a participation in the foreground, then I would have to answer with, "No". If, however, you mean to say, that co-operation was given to the state and increasingly so as force increased, then I have to say, "Yes".

Q. This increasing participation which you mentioned was it conditioned by force and terror?

A. It was conditioned by the legal and administrative directives which were issued by the Nazis upon the basis of the Enabling Act, and also on the basis of older laws; to a large extent, these directives were given within a frame of legality, or at least had the appearance of legality. Only at a much later stage, the question of the legality of these matters became more apparent, more acute.

Q. Was the consolidation of such power a necessary consequence of the internal political terror policy, as you have just stated, and must it be understood in that sense, and was it the consequence of the forcible destruction of all centers which came into question as potential cells of resistance, as for instance Labor Unions, Associations, parties, etc?

A. I have already stated this morning, that in the course of long development, the divergency between the party and state increased, particularly after a law as to the Union between Party and State had been decreed. This was a law which had internal revolutionary consequences. It was a law which was the pronouncement of open party dictatorship before the World and before its own people.

I must add that in the latter stages force extended to all organizations and other agencies which up to that time had not been directly affected by the aggressive political legislation. For instance, everything which was done by Dr. Goebbels in the field of culture, or everything which was done in the field of church questions, etc. One, therefore, can hardly find an unequivocal line of that force during latter stages.

Q. Are all of these questions and problems which are posed to you, and which I have touched upon so complex that it becomes extremely difficult, if not impossible to answer to them briefly and exhaustively?

A. Any reply to such questions at the moment is impossible for a German. For a foreigner, in view of the complexity of the happenings, it is only thinkable after a long period of time had elapsed and after thorough historical studies.

Q. And now, one last question. This consolidation of power in the eyes of the man of the street, was it a consequence of the prestige which Hitler gained in his country or was it a consequence of the prestige which he received from abroad, as a result of foreign political successive successes, representative visits from other states, etc?

A. Partly, yes, but naturally that was not the only reason because there were many internal and foreign political factors.

DR. DIX: Your Honor, this brings me to the end of my general subject about the means of accession to power and the means by which power was consolidated. I shall now turn to the specific proof concerning my client.

Q. Mr. Lammers do you know Mr. Schmitz?

A. Yes.

Q. Would you please describe his personality?

A. I have known Geheimrat Schmitz from the time I. G. Farben was founded. I have known him closely and intimately. His field of work dealt with financial political questions of the enterprise, and the wealth of problems which arose in connection with financial mergers, with regard to the treatment of subsidiary companies, etc. I made the experience that his expert knowledge in this field was very extensive, and that Geheimrat Schmitz had earned the absolute confidence of the Aufsichtsrat as well as that of all of his colleagues in the Vorstand.

As I have already mentioned this morning, my activities were inside of the Aufsichtsrat and also dealt with some committees of the Aufsichtsrat. Within the committees of the Aufsichtsrat the members of the Vorstand of the I.G. appeared and expressed their opinion according to the subject which was being discussed. Therefore Geheimrat Schmitz was often asked to participate in such discussions which were carried on within the committees of the Aufsichtsrat; so far as such discussions concerned general and political questions, Geheimrat Schmitz hesitated to appear and often did not appear at all, but often it was left up to his discretion whether he wanted to appear or not. However, when financial political questions were discussed, he was always there, also whenever social-political problems of the enterprise were under discussion.

In that connection I particularly recall the difficult and the detailed discussions which took place about the employees' share in the profits of the enterprise as well as discussions concerning the development of large scale social institutions.

A. He was asked to participate in such conferences because the measures needed a great deal of monetary expenditure and because the Finance Minister of I.G. Farben had to make such funds available.

Q. Witness, you have been speaking of the social efforts on the part of the I.G. and of the support which Geheimrat Schmitz gave to such measures. To the field of social work belongs a basic idea of a "works community" as represented by Logien and others. Let me ask you the following: What was Mr. Schmitz' and his colleagues' attitude towards this great social thought?

A. At first we had to deal with this question within the I.G. Farben because at the time, as it is well known, representatives of the workers and employees were sitting in the board of the firm as full members with authority. Consequently, these representatives of the workers and employees discussed all social problems which concerned them and then approached the I.G. Farben management with them, through the Aufsichtsrat members. This is how those problems reached the highest levels of I.G. Farben. I was a witness to see that the discussion, with respect to the cooperation between employers and employees, was carried in agreement with and positive approval of Geheimrat Schmitz. The second function of the I.G. towards the outside was the pursuance of these thoughts with respect to the entire German industry; that is beyond the frame of I.G. Farben.

THE PRESIDENT: That was an answer.

BY DR. R. DIX:

Q. One last question: During this trial the problem of contributions and gifts made to the party or affiliations of the Party play a great part. According to your observations and experiences within the circle of your social and professional connections, were such payments always dependent upon the following of National Socialist motives?

A. To what years are you referring?

Q. Well, first speak about the entire Nazi period, and if you think that a specific time in that connection is of specific importance, then please mention it.

THE PRESIDENT: Now, counsel, that question is of a character to open up a wide field of voluntary information on the part of the witness. The subject of your inquiry--contributions of Forban to the Nazi Party or the Nazi Program--is proper; but can you not direct your questions more simply and more concretely to different phases of that subject, instead of subjecting the Tribunal to the burden of listening to too general a discussion of the problem?

DR. R. DIX: Your Honor, to put this question more concretely is, according to my personal conviction, a very difficult task, and, at the moment, even impossible; if not, a wrong impression would be created by such a concrete framing of the question. I am trying to avoid awakening a wrong impression, and I am trying to avoid putting any leading questions to the witness; so I would, therefore, be grateful if the question could be put the way I did. Of course I can put it more concretely.

THE PRESIDENT: Well, try that first, and we will see how you get it if you put it more concretely; and if you encounter difficulties we will be liberal. Let's try that first and see if that doesn't develop results here.

BY DR. R. DIX:

Q. According to your observations did only followers of National Socialism make any monetary contributions to the Party, or their affiliated organizations, or were such contributions also made as a result of other motives than those of friendly inclinations towards National Socialism?

A. Many private citizens have, at all times, made contributions to many parties, prompted by different motives. The industry, in order not to have any quarrels about these questions, has endeavored to find some key solution. One might say that the relationship of power of such parties, as it was expressed by their representatives in parliament, had formed the key, and I am now speaking about the parties loyal to the State at the time. That was true before the Nazis came into power. I can put the Tribunal at rest; I can't discuss the subject at great length because

I know very little about it, but I can say the following—and I am now concretely speaking of the I.G. Farben: The contribution made on the 20th of February 1933 was the subject of discussions and that, according to the reports which were made at the time, a collective contribution was made to those parties which then belonged to the contemporary government, and that some sort of key was searched for with respect to the distribution of such funds, and then, of course, one took into consideration the relationship of strength between those parties. Expressed in terms of the parties, such contributions were relatively small in comparison with contributions which were made in previous periods. I think there were two or three millions; I can't quite recall it.

Q. Altogether?

A. Yes, altogether. I have not learned whether during the last time, from the Reich Association of Industry, or to what extent on the part of Farben, the individual contributions were dealt with; but I think we're only concerned with a relatively short period of time because all parties were very soon thereafter prohibited. This meant that a distinction, according to parties' political considerations, could no longer be made. Then, during the latter period we were only concerned with certain amounts which were expected and which were given, and which partly were officially turned over to the Party—in particular the Adolf Hitler Contributions.

THE PRESIDENT: Mr. Witness, we're consuming very considerable time. Let us ask you just one or two simple questions:

BY THE PRESIDENT:

Q. Did the contribution of Farben to the Nazi Party, or the Nazi Program, necessarily imply sympathy with that program or not? On the part of the donors I mean?

A. It is my firm conviction that there were no expressions of sympathy whatsoever.

Q. Then, if that is true, what was the motive or the reason for the donation to a political party, with which the donors had no sympathy? Why

did they do it if they were not in sympathy with it? Just tell us in a word.

A. I must assume that such contributions were made because the non-participation in such contributions would have led to serious disadvantages for such firms.

THE PRESIDENT: Doesn't that answer your question, Dr. Dix?

DR. DIX: I have one more question.

BY DR. DIX:

Q. Has it come to your attention, as a result of your professional social connections, that in the Third Reich many people have made monetary contributions to the party or its organizations, and that such contributions were made by persons who were not favorably inclined to the party—quite apart from any monetary contributions made by the I.G. Farben? Can you say that or can't you?

A. That was repeatedly done in order to prevent personal disadvantages.

Q. That will answer my question.

DR. DIX: This, Your Honor, brings me to the end of the examination of this expert witness.

THE PRESIDENT: Thank you.

Does any other member of the Staff of Defense Counsel desire to interrogate this witness? Just one at a time, gentlemen.

DR. BERNDT: Dr. Berndt for the defendants Mann and Ter Meer.

BY DR. BERNDT:

Q. Witness, I only have a few questions.

Were you present during the meeting on the 27th of January 1932 when Hitler held a speech in the Industrial Club of Duesseldorf?

A. No, I was invited, but I didn't go there.

Q. Was this meeting a special meeting which was held for the purpose of hearing Hitler, or was this meeting part of a number of speeches and meetings ordinarily held by this club?

A. This meeting was one of a series of lectures where all political parties were heard with respect to economic-political subjects.

Q. Did you yourself once speak in that circle?

A. I spoke there approximately half a year before that time, about the effects of the Young Plan.

Q. Do you know whether during that lecture Hitler was intended at first as a speaker, or someone else?

A. I don't know anything about that from my own knowledge because I was not a member of that club. I was only a guest. I have heard, however, that Fritz Thuesen demanded that a speech be made by Hitler particularly as I and Gochen House, the socialist, had held speeches before.

Q. Have you heard anything about Hitler's success with this speech?

A. I immediately after that speech I received a few personal reports from Duesseldorf, and I also had occasion to read newspapers. In the "Bourgeois" newspapers, in the "Vossische Zeitung" and in the "Koolhische Volkszeitung" the failure of Hitler's speech was being reported.

THE PRESIDENT: You're getting into a field of hearsay now, that is quite apart from any knowledge of the witness, and I don't think you'd better pursue that too far, Dr. Berndt.

DR. BERNDT: I have no further questions in that connection.

BY DR. BERNDT:

Q. I now want to turn to a different field. Witness, you said this morning that industry was no longer "master in its own house." You were speaking about planned economy and interferences by the State. I should be grateful to you if you could make any statements as to the periods involved in that connection.

A. Do you mean when "master in its own house" had ceased to be a fit expression?

Q. Yes—when planned economy State interferences began.

A. This cannot generally be answered because it varies in the case of different industries and because, at the very earliest and in the most severe way, such industries were affected in whose products the greatest public interest was to be found.

Q. Can you tell us anything from this point of view with respect to the I.G. Farben or individual plants of the I.G. Farben?

A. There can be no doubt that the I.G. Farben was in the foreground of such interests. I am afraid I am not informed about the individual plants of I.G. Farben. I do know, however, that one of the most important objects was naturally the gasoline production etc., and that very soon special pressure was exercised in many ways.

Q. Thank you very much; I have no further questions.

THE PRESIDENT: Any further interrogation of this witness by the Defense?

DR. DUERR: Dr. Duerr, Counsel for the Defendant Guttinow.

BY DR. DUERR:

Q. Dr. Leuners, according to your knowledge of professor Bosch's attitude, do you think that it is possible that, at any one time, he was prepared to go into an alliance with Hitler, or do you think that he would ever have permitted the I.G. to go into an alliance with Hitler?

A. I have already previously discussed that this morning. I am replying to this question with a very clear "No".

Q. After the year 1933 what would an open opposition on the part of

the I.G. against Hitler have meant?

A. Enormous difficulties. Since I don't know how the Party in detail would have reacted, I cannot give you any specific reply.

Q. Was it Professor Bosch's view and opinion to try by way of an elastic resistance, to save the I.G. from the influence of the SS and the Nazis and to maintain German science and research?

A. I have mainly been a witness of the internal suffering on the part of Bosch and his disgust about such measures; However, I did not talk to him about the individual questions concerning the form of resistance. However, I did have detailed discussions with him about his fight in order to maintain the spiritual freedom of German science.

Q. Can you tell us something about his attitude towards racial questions?

A. Bosch, as I myself, belonged to the most severe opponent of this theory. I have discussed many a question with him, and it is true of myself and my own efforts in favor of these oppressed racial groups, that I had to go to him for advice and assistance, which I actually found.

Q. Can you describe any cases to us where Bosch exercised his influence in favor of Jewish associates and scientists?

THE PRESIDENT: Now, counsel, Dr. Bosch is dead; he's not on trial here. The inquiry that you have directed at the witness may be proper if it related to some defendant on trial, but here, at the cost, it relates only to a deceased high official of the Farben enterprise. I think it would be opening a door to a collateral inquiry that might consume very considerable time and bear no direct relation to the question of the guilt or innocence of the defendants. I believe that inquiry is a little too far afield to justify going into it.

DR. DUERR: Your Honor, the questions with respect to Geholmarat Bosch's personality refer to the charge made by the prosecution, according to which I.G. Farben, in the year 1932, went into an alleged alliance with Hitler. At that period of time the leading personalities of I.G. Farben were

Professor Bosch, and Duisberg, and I believe that testimony as to their personalities is relevant and can contradict the statement made by the Prosecution.

THE PRESIDENT: Your observation is just proof of the trouble to which your inquiry would lead. You say that the inquiry is proper as to the leading personalities of the Farben enterprise. I am not sure if we would indulge that way where we would draw the line or whether we would agree as to who was or was not a leading personality. I think the question had better be limited to the attitude and the position of the defendants on trial, or to Farben as a whole, and not get into the doubtful and dubious field of whether or not a particular individual was or was not such a leading personality as to reflect the policies of the company for the defendants on trial. I think that ruling had better stand.

DR. DUFFY: I have no further questions at the moment.

BY MR. MELBERT DIX (Defense Counsel for defendant Schneider):

Q I only have one question, Mr. Leonard, I should like to know from you what observations you made generally about the treatment of foreign workers in Germany, in particular, those who were employed in industry and, if you had any opportunity to observe it, those who worked for I. G. Farben. Just answer very briefly.

THE PRESIDENT: Just a moment.

MR. SPEECHER: The questions seems to me rather multiplicitous in that it starts to talk about the general treatment by German industry, generally. So far as that is generally applicable, I think we have some background for that in some of the findings in the D-T decision, if that is important. It seems to me that if this inquiry was limited to the witness's knowledge of I. G. Farben there would have something which is in direct relation to this case.

MR. DIX: As I have already stated in my opening statement, the D-T mainly deals with the entire problem of labor, specifically with transport and allocation, of foreign workers and only reprimands industry for having allowed occasional bad conditions. However, the prosecution makes much further statements than that and, therefore, I think my question is justified.

THE PRESIDENT: Well, I may say to you, counsel, that it's possible that the prosecution itself, in the absence of an objection, may have offered some proof that would not have been permitted if there had been an objection, and which may not be very important to the Tribunal in the final consideration of the case. I think what I said to your co-counsel a little while ago is equally pertinent here. We're confronted with the necessity of limiting the scope of this evidence to one of two things: that which applies to these defendants or some one of them, and that which applies to the organization of which they are charged to be a part and for which the prosecution claims they are responsible. If this witness can throw any light upon the knowledge, on

the conditions that obtained in any Farben plant for which those men, as a part of an organization or individually, were responsible, I think it would be entirely proper. But I do feel that to get outside of that into the field of German industry proper, I think would be far afield. I think it ought to be limited to matters of which the defendants have actual or implied notice.

BY DR. DIX:

Q In that case, I shall limit my question to I. G. Farben in case you know something about it, of course. Do you know anything about the treatment of foreign workers who worked for I. G. Farben or don't you know anything about it?

A I left the Aufsichtsrat of I. G. in the year of 1932 because, at that time, the Bruening law went into effect that only twenty persons could remain in one Aufsichtsrat. We were then over fifty, and I dispensed with my representation there. Ever since then I was in a purely advisory relationship to I. G. Farben which still permitted me to participate in the committees which I mentioned before, but the former connection with actual events inside the plants was thereby discontinued. Consequently, I cannot answer anything from my own knowledge about that specific question.

DR. DIX: Thank you very much.

BY MR. GATHER (Defense Counsel for defendant Ambros):

Q I deduced from your statements that you suffered from dictatorship on your own body. Characterizing dictatorship, you stated that its measures are incalculable. I'm asking you the following: Could one say in supplementation that the Hitler dictatorship made it possible to keep certain measures strictly secret?

A Yes. Much went on in secret as it happens in the case of every dictatorship.

Q Witness, in this connection I am particularly thinking of measures in connection with the institution of concentration camps.

Witness, did you know about any specific events in concentration camps?
For instance, gasings in concentration camps?

A For a long time I knew nothing at all about concentration camps, as such. My only contact was based upon experiences I made through the Catholic and Protestant Churches. When the arrests increased, certain fundamental statements were made in the churches, but at no time were any details mentioned. I recall the statements made by Cardinal Graf von Galen. We heard about these measures through these sources and we had fervent sympathy with those who were suffering, but we did not want to believe and one did not want to believe that such things were possible.

Q Witness, I shall put the question more specifically. Did you know — and by knowledge I mean positive knowledge — about gasings in concentration camps?

A No.

Q Witness, do you think that yours is an exceptional case or is it your conviction, as a result of conversations with people of your circle, of your position, of your knowledge, that this would also hold true of a large part or all or many other people?

A Even the names of such camps were kept in such secrecy that a large part of the Germans didn't know about them. I found out these names only through investigations by the Allies after the war. By way of rumors it was said that, when evacuating conquered territories in the East, massacres were carried out and that the Wehrmacht, at that time, protested against such measures and there was a fight between the Wehrmacht and the SS. This was the general way rumors ran at the time.

Q Witness, according to your knowledge of the situation at the time was there any possibility at all to investigate such rumors and to test them as to their correctness?

A That was impossible for the entire population to do. That was only possible as a result of a "lucky coincidence". It was a coincidence when one could get any specific information.

Q One concluding question: According to your knowledge of things, was there a possibility on the basis of such rumors to put any measures into effect? Could private persons take any measures?

A How do you mean, measures? Against the state or against what?

Q In order to do away with such conditions which had become known by rumors.

A There was no power to do anything, of course, and the only way to do something was to protest. Such protests were raised, particularly by the heads of the Catholic Church.

DR. GATHER: Thank you. I have no further questions.

BY DR. SILVER (Defense Counsel for defendant von L. Lierich):

Q Mr. Lammers, I should like to go into a different field with you. As you stated, you were in the Aufsichtsrat of the I.G. some time ago, and beyond that you had a great deal of experience with the administration of large concerns the Vorstand of which consisted of several members.

A Yes.

Q Consequently, have you any knowledge about the business regulations and responsibilities of such share holding companies which have Vorstands consisting of several members and I am particularly referring to the I. G. Farben?

A As a result of my experience I have managed to gain a great deal of knowledge about such measures, but from the year 1929 until the year of 1931 I was the President, elected by all parties of the Reichstag, of the large German economic inquiry, the so-called "Anketo". Within the framework of this inquiry, as a result of my position, I was in charge of hearings with respect to such large concerns. Within these hearings the question which you are putting to me now, concerning the collective relationship in the case of Vorstands comprised of many members, was very important because a reform of the Corporation Law was imminent and because this problem was especially important in that

connection.

Q Thank you. In such cases, and, in particular, in the case of the I.O., was this business handled collectively by a number of members of the Vorstand, or was business divided among the individual members of the Vorstand? Mr. Lemmers, in order to prevent misunderstandings, will you please take into consideration any changes which came about as a result of the reform of Corporation Law?

A It is a matter of course that not one single member of a Vorstand is in a position to overlook the total sum of events as they happened in a huge undertaking as it was in the case of I.G. Farben. But, even in the case of smaller companies, a division of tasks is natural and necessary because not each individual Vorstand member can be made responsible for all Vorstand functions merely because he does not have the necessary experience. I must only remind you of the business men, technical experts, and scientists. There was an extensive division of tasks within I.G. Farben. Certainly it was not done in the form where every individual member of the Vorstand had to work from an isolated point of view, but within the plants or groups of plants there was a closer cooperation between various groups of Vorstand members and it was a cooperation which varied according to the subjects which may have come up. For instance, whenever a technical problem affected and comprised a large sphere, different personalities had to cooperate then if one was concerned with economic, scientific or mixed questions.

Q Mr. Lamers, within this respective sphere of tasks with which the individual gentlemen had to deal, were they independent and solely responsible for current business?

A A considerable independence had to be given to these gentlemen, as a matter of course, because, otherwise, they would not have been able to become members of the Vorstand of such a large enterprise, but one provided for a repeated exchange between the committees or "Gremiums" inside the Vorstand. These were the components which have to be understood in connection with independence.

Q Did I understand you to say that there naturally was a cooperation as far as any one subject dealt with the field of tasks of one or more Vorstand members?

A - - - - -

Q Now, there were certain matters which had to come before the entire Vorstand, which had to be presented before the Vorstand and then had to be decided upon. According to your experience and knowledge, did any

such report by the gentlemen concerned deal with all details concerning the question, or did it confine itself to the essential points of the matter in question?

MR. SPRECHER: Mr. President and Dr. Silcher, I didn't hear the answer to the last question and I don't think it did come through. The witness nodded perhaps. I just wanted to clear the record. I don't have an objection.

THE PRESIDENT: The Chair gained the impression that there was an answer but it may have been by reason of the fact that the witness nodded. I was looking at him and he may have nodded. I am not sure whether it is on the sound-track. If counsel wishes, in the interest of clarity, he may repeat his former question and we will get the answer.

MR. SPRECHER: If we can stipulate that the answer was "yes," I am quite content.

THE PRESIDENT: Are you satisfied, counsel for the defense, with a "yes" answer to the former question.

DR. SILCHER: Yes.

THE PRESIDENT: As stipulated by Counsel the answer may be considered to have been "yes."

Now, Mr. Witness, there is no objection to the last question and if you have it in mind, you may answer it. If you have not, you have a right to ask to have it repeated.

BY DR. SILCHER:

Q In order to not have a misunderstanding, I must state that we were just speaking about the question before the last and the answer you gave, but now the answer to my last question is still outstanding. Do you still remember it or shall I repeat it? This was a question as to the extent of any report made before the Vorstand.

A Yes, it was the question whether during the meetings of the entire Vorstand, details were brought up or not?

Q Yes.

A That I cannot say from my own experience. I cannot give you any

direct reply because I did not participate in the meetings of the Vorstand, but I do think that it is a matter of course, because I have had similar experiences with other companies, that the central Vorstand meetings had the purpose to inform the Vorstand colleagues about the trend of developments in the specific fields and then to supplement any questions which needed supplementation. Such meetings developed organically. One minute. I should like to repeat once more that I did not attend any one meeting of the I.G. and, consequently, cannot give you any certain testimony based upon my own knowledge.

Q At the beginning of my examination, Mr. Lammere, I asked you about your experiences in the administration of joint stock companies with many Vorstand members.

A Yes. Well, in that case, my answer stands as it was.

Q If any one subject was presented before the Vorstand and was dealt with there and if all other members had agreed and a resolution was reached, what then was the responsibility of the other Vorstand members with respect to this matter and the resolution adopted? In particular, did such a resolution totally comprise the entire matter or must one keep it within the limits which arose as a result of the presentation before the Vorstand?

A This is one of the most difficult questions with respect to the development of the so-called organic laws pertaining to the boards and committees of our company. An unequivocal clear legal or by judicial practice determined interpretation is non-existent in Germany. At any rate, I don't know of one. This economic inquiry of which I was speaking... I must ask the President whether I'm permitted to make these legal explanations here?

DR. SILCHER: Your Honor, in that connection, let me say, as I have already stated initially, that I'm using Mr. Lammere as a witness as well as an expert.

MR. SPRECHER: Mr. President, I think that the inquiry has some relevance. I would like to have some more assistance from defense counsel

so that I can try to do a fair job here by having a little more qualification laid before such a subject is gone into. For instance, the questions are very general and yet, as we have seen from other parts of the testimony, there was a difference, depending upon the time, between the first organic law for industry and then, later on, the Aktiengesetz, etc. and if counsel could ask his questions a little more specifically, I think we would be in a much better position to actually not interfere so much with the important factual matters which counsel desires to bring out.

THE PRESIDENT: I would first say to the witness that, unless the Tribunal directs you not to answer a question, you may answer any question that is propounded to you, but we will appreciate it if you will make your answers simple and direct and brief.

Now, to counsel for the defense. The prosecution has raised the point that from your questions they cannot tell as to what period you are inquiring about. It would be proper, I think, if you could limit your question as to the period of time so that we will know under which field of German law you are interrogating the witness. If you can do that, you may go along in the line you have indicated.

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DR. SILCHER: Your Honor, when putting my first or second question I have asked the witness to state expressly whenever a change occurred through a reform of the corporation law which may have occurred during this entire period. I want to state expressly, witness, that when giving me your answers, to keep in mind the period during which, according to the indictment, the I.G. had gone into its alliance with Hitler and had prepared aggressive war.

THE PRESIDENT: Counsel for the defense, can you not yourself, in the form of your question, limit it so that it is before or after this basic change in German corporate law so that the Tribunal, counsel for the prosecution, and the witness all understand which period of time you are inquiring about? If you will limit your question to that, there can be no confusion and it will expedite matters very much.

BY DR. SILCHER:

Q.- I shall try to clarify that point by putting a question. Mr. Lammert, in connection with the problem with which we are dealing, did any change occur as a result of the new corporation law of the year 1937?

A.- No.

Q.- Then when answering my questions will you please keep in mind the period from 1932 until the present time.

MR. SPRECHER: We can at least limit it to 1945. I understand there have been some changes in corporation law since 1945.

THE PRESIDENT: Well now, gentlemen, this is getting down to a pretty fine point. Is it your understanding that the German corporate law was the same between 1932 and 1945? You are lawyers — you ought to be able to answer that question.

DR. SILCHER: Your Honor, perhaps I should like to briefly make a statement.

THE PRESIDENT: That is just the trouble. We have had too many statements and we can't get some very simple questions answered here. Is it your theory, Mr. Prosecutor, that so far as the scope of your inquiry is concerned, German corporate law remained in the same condition or situation between 1932 and 1945.

DR. SILCHER: It is my theory, Mr. President, that the changes which came about in German corporate law during the mentioned period with respect to the problem which we are discussing now had experienced no changes.

THE PRESIDENT: Very well. Now then, limit your questions, and if you do not the Chair will undertake to do it for you. Mr. Witness, counsel proposes to ask you some questions about practices under German corporate law as they apply to the corporations generally — for the I.G. Farben in particular. We desire that you answer those questions in the light of what the law was between 1932 and 1945. We are not concerned with what the law may have been prior to 1932 or since 1945. Do you understand? Now, ask your question.

A. — I believe that the period involved will cause us no difficulties whatsoever. Quite simply, for legislation and jurisprudence we were only concerned with the question, can collective liability under civilian, as it is provided by the German corporate and commercial law, remain unchanged if the number of Vorstand members continues to increase, and if the economic situation becomes increasingly complicated so that in the case of many questions one will not be able to manage without the assistance of specialists. The question came to a head as follows. Can a specialist who is a member of the Vorstand at all have some collective responsibility? Can he have it as a person? I have heard a number of economic leaders on that point and the result was, in order to be brief, that some form of collective responsibility of the Vorstand from the point of view of civil or private law can not be dispensed with. In that

connection, the question was posed, what should happen if a member of the Vorstand, who can act independently generally, begins to misuse that independence given to him? For instance, if a financial man entrusted with financial matters is using the Company's money for purposes of private speculation. The question arose, is the Vorstand collectively responsible if, through a punishable act or, from a civil legal point of view, an unpunishable act, some damage had come about. The result was reached that any such responsibility can only be asserted if the other members of the Vorstand have not displayed the necessary care when observing the entire business transactions; in other words, within the framework in which he could possibly do that. I shall be finished very soon. As an example it was stated that in all larger firms and even in every company, according to corporate law of Germany, as well as in other European countries, certain supervisory organs were being used, who, for instance, were in charge of controlling the financial transactions. Either trustee companies, as for instance Price Waterhouse and many others, or in the case of larger firms, special auditing organs within the firm. If such organs had functioned and existed in an orderly manner, general opinion asserted that then a repeated individual investigation by the individual member of the Vorstand was no longer necessary, unless he wanted to actually assume collective responsibility. As a result, when dealing with punishable acts by Vorstand members under criminal law which they did not commit in their capacity as Vorstand members, but as criminals, that an automatic co-responsibility of the other Vorstand members can not be asserted.

BY DR. SILCHER:

Q.- Mr. Lemmer, if the Vorstand member presented a matter before the entire Vorstand, was he then obligated to present all essential points concerning this matter?

A.- I think I have just answered that question, counsel. I think

one of your predecessors has already questioned me on this point. I said that that was to be treated individually according to each case. At any rate, technically, it was impossible to discuss all details of the various problems on the agenda in the entire Vorstand.

Q.- I think, Mr. Lemmers, you just misunderstood me. I asked whether they were obligated to deal with all essential points. I was not speaking of details. I was confining myself to essential points.

A.- Naturally all those points had to be brought up which were necessary to be known when judging the matter before the Vorstand.

Q.- And conversely, could the other Vorstand members assume that the report of their colleague in the Vorstand actually embraced all essential points?

A.- That is a question of confidence in the business ability, and loyalty of the colleagues. Those colleagues were not chosen by the Vorstand members themselves, but they were appointed by the Aufsichtsrat, by the Board. The Aufsichtsrat, the Board, had to guarantee, that every Vorstand member would come up to his duties toward his colleagues. In the case of large concerns that, however, is not always easy.

THE PRESIDENT: Counsel, it is almost our recess time. Let me say to you gentlemen that when we reconvene, if the examination of this witness is pretty promptly concluded, the Tribunal will not be unhappy about the situation. We are now in recess.

THE MARSHAL: The Tribunal is again in session.

BY DR. SILCHER:

Q. Mr. Lammers, you were speaking about the relationship of the individual Vorstand members to one another regarding collaboration. You mentioned their collaboration and you spoke of in how far they had to pay attention to the various fields of work of the other Vorstand members. Now, I will make the question somewhat more concrete.

Did a member of the Vorstand have any obligation to take an interest in the fields of work of his colleagues, which was not his own work, without any concrete indication that something was wrong there?

A. No. The Vorstand members had a regular order of business which assigned to them the field of work with which they had to deal.

Q. Now, if a Vorstand member had two basic duties: to take care of his own work and, for special reasons and under special circumstances, to take care of certain work of his colleagues--which duty had priority if the man was so busy that he was simply unable to perform both duties?

A. I can hardly answer your question in that form. I can only say that normally everyone had a primary duty of doing his own daily work. It is regrettable if he is given additional duties and is overburdened. To prescribe a duty to him in one direction or the other is hardly possible.

Q. Mr. Lammers, when you have spoken of responsibility and co-responsibility in your testimony, were you speaking from the point of view of civil law--that is, corporation law--or were you thinking of criminal law?

A. Only civil law. The liability is under civil law. It might be that some damage would be caused but there would be no question of criminal liability.

Q. If one were checking the work of colleagues on assuming the situation that a Vorstand member should have concerned himself with the work of some colleague and failed to do something, would that have been negligence or deliberate action?

A. Normally it would be a case of negligence judged by your question, if he failed to do something he was supposed to do. But I could imagine a case when it would be a deliberate act. For example, if he didn't get along with his colleagues and said "I refuse to go to see that man"—that is all an imaginary situation—normally it would be just negligence.

Q. Now, looking at it from the point of view of criminal law—and I am speaking of German criminal law—is negligence punishable, even if it is not especially mentioned, and a penalty provided in the penal code?

A. "Nullum crimen sine lege" under German law, only where negligence is expressly designated as punishable.

Q. No further questions.

THE PRESIDENT: Anything further from the Defense?

If not, the Prosecution may cross-examine.

CROSS EXAMINATION

CLEMENS LAMMERS, Resumed

BY MR. SPRECHER:

Q. Mr. Lammers, you testified that you left the Farben Aufsichtsrat in 1932, and then you went on to testify that you still had some duties with Farben in advising some of their highest committees. Were you still paid by Farben after 1932?

A. I had advisory connections within I.G. Farben industrie which I retained until 1944.

THE PRESIDENT: Now the question, Mr. Witness, is whether for those connections you were compensated by Farben.

A. Yes.

Q. Was that your main source of income between 1932 and 1944?

A. No.

Q. Did you continue as a technical advisor in industry—and I mean to a number of industries—between 1932 and 1944?

A. In 1932 I was on about fifteen German concerns, in the Aufsichtsrat or the Beirat, Advisory Council, depending upon the organization. All

of these firms were very much interested in having my assistance despite political persecution. This activity continued. Also my private activity as an expert to give my opinion on legal matters and so forth continued and there was a new development, that is that I acted as an arbitrator on national and international economic questions because confidence in German normal commercial jurisprudence began to fail, and more and more matters were settled by arbitration.

Q. Well, suffice it to say you did receive an income from a number of private firms up until 1944, is that correct?

A. Just as every scientist for his work; that was my main income and like any Aufsichtsrats member for his normal pay which is in the character--yes.

Q. Were you the member of the Vorstand of any German A.G.'s (Aktiengesellschaften) between 1932 and 1944?

A. I was never a member of a Vorstand; I was always a free advisor.

Q. Between 1932 and 1945 you were on the Aufsichtsrat, however, of a number of companies, were you not?

A. Yes.

Q. Approximately how many?

A. Perhaps six or seven.

Q. As an advisor to the so-called Kalle Committee of I.G. Farben, you knew that in 1932 I.G. Farben made contributions of at least more than 100,000 marks to the Nazi Party, did you not?

A. No; these questions were not discussed in the Kalle Committee, the question of the amount of individual contributions. The Kalle Committee dealt with the basic questions of--

DR. FLX: I object to this question. The question of whether payments were made to the Party by Farben is under dispute and has not been proved. I cannot ask the witness: Did you know that? Because the witness has to assume that that is true. I object to the form of the question. I would be willing to have the witness asked whether he knew anything about such a payment.

THE PRESIDENT: This is cross-examination, and counsel for the Prosecution is not limited by the rule to which counsel for the Defense alludes; and, besides, this witness is an expert, apparently intelligent, fully capable of formulating an answer that will express his views. He will take care of the situation, I have no doubt. The objection is over-ruled.

Besides, the question is answered anyway. It is in the record, and the counsel for the Prosecution may ask his next question.

BY MR. SPEECHER:

Q. Now, witness, did you know from your relationships to these various Farben committees and to Farben leading officials--do you know whether or not any contributions to the Party were made before the 20th of February, 1933? If you don't know, just say so.

A. I have no knowledge. May I add something? A list of contributions up to 1930, 1931--I am not sure exactly what the date was--gave the parties which received something: conservative, liberal, and so forth. I never saw the NSDAP on such a list.

Q. Now, an exhibit which has been introduced in evidence here as Exhibit 493, which is NI-8197, Document Book 22, page 33, contains a quotation from Gustav Krupp with respect to the transition from the old Reichsverband (Reich Association of German Industry) to the new Gleichgeschaltet, or Coordinated Association, which you in part described. And I am going to ask you a question about it because we want to know whether it had any relationship to your own resignation. "On the 5th of May, 1933" the quotation states, and that is at page 98 of the English, that "Krupp officially stated at that time that he issued directives on the 3rd of May for the reorganization and simplification of industrial associations, and that his aim was to bring the new organization into complete accord with the political aims of the Reich Government." Was that one of the reasons which caused you personally to resign, on the 5th of May, two days later?

A. Yes.

Q. Now, you mentioned that industry was promised that it would have a certain freedom to address requests to the Reichsregierung (the Reich Government) after Hitler was in power, at a meeting on the 20th of February, 1933. Were you personally present at that meeting?

A. No. But I did not say suggestions could be offered but that a committee for consultation was to be set up.

Q. Did you hear about that from anyone who participated directly in that meeting?

A. I did not understand...well, at the next meeting of the Presidium of the Reich Association of German Industry a brief report was given that there had been a conference with the Reich Government and that at this conference the creation of a joint committee between the Reich Government and industry had been decided upon. The question of donation which was discussed after this meeting I learned of only much later. According to the information given out then, Mr. Krupp von Bohlen allegedly said at the meeting that he, as chairman of the Aufsichtsrat, could not dispose of the funds of the firm and there would have to be a decision of the Vorstand. The firms are supposed to have been entered on the list with contributions. Only now have I learned the exact circumstance from the newspapers, when Mr. Schacht was examined on this question.

Q. Did you learn anything about the 20th of February 1933 meeting when you were an advisor to the Kalle Committee?

A. I have just told you that I learned of this meeting in the Presidium of the Reich Association of German Industry, and Dr. Duisberg and Dr. Bosch belonged to this Reich Association so that we received this information at the same time.

Q. I am still not quite clear, witness. You say Bosch, Duisberg and you learned of the 20th of February, 1933, meeting during a discussion in the Reich Association of German Industry. That much I understand. But I was asking you if you heard at that time about the contribution which Farben made. You made some discussions, I understand

in your direct testimony, concerning this division of money. Will you clarify that?

A. Not a word was said in the Kalle Committee about the whole matter, especially since the Kalle Committee in its most critical time of which you speak did not meet because, as I recall, Mr. Kalle was ill and was not in Germany. At any rate, this question was not touched upon in the Kalle Committee.

Q. Did you hear about the contributions that were made at the meeting of the Reich Association, also?

A. What Reich Association meeting do you mean?

Q. There was this discussion of the meeting of the 20th of February, 1933.

A. In the Reich Association of German Industry there was a brief report given about this meeting. It was said that Mr. Hitler made a brief address and then left; Mr. Goering then made a brief address, and the contents were freedom of enterprise and the creation--

Q. Just a minute. I did not ask you about the content of the speeches. I asked you if that is where this particular thing was discussed so it came to your knowledge. Now, that is a simple question.

THE PRESIDENT: Counsel, perhaps the Tribunal can help you.

The Prosecutor wants to know if the matter of contributions was discussed at the meeting about which you are talking?

A. No, and that was nothing which affected the Reich Association. It affected only the firms which had been approached for these donations.
BY MR. SPEECHER:

Q. Where did you learn that the firms had to go to the Vorstand in order to find out whether or not these so-called payments on the list could be made? Where did you learn that?

A. What firms? What Vorstand. I don't understand your question. I can't understand your question. Where did they learn what firms? I did not understand you. (In English) I didn't understand your question.

This is all right: You made that clear and you are entitled to a question that you can understand, so just stand by and give the Prosecutor another chance.

BY MR. STROTHEN:

Q. Tell us whether or not, as you recall your testimony on direct examination, you spoke of contributions which industry made just after Hitler came to power, on the 30th of January, 1933. Did you testify about that or not?

A. Yes, I did.

Q. Now, did you testify also about any contributions which came out or had anything to do with the meeting of the 20th of February, 1933, when, among others, Schacht and Goering and Hitler spoke, as you said? Did you talk about it or didn't you, in your direct examination?

A. No. I heard that at this meeting eight firms, I believe it was, were asked to make contributions, a sum or which did not affect the Reich Association of German Industry in any way. It was a private decision of the various firms. Never have I learned up to the present day which firms paid these sums and what the sums were.

Q. Where did you learn about the fact that these contributions were made at all? Where did you learn that?

A. At a later time it was said that Mr. Schacht had presented a list for subscription. I cannot tell you when I learned about these things through private channels. I never had any knowledge of the details of this list or the size of money involved.

Q Did you learn about it before or after you resigned on the 5th of May, 1933?

A I don't remember. My resignation was essentially for quite a different reason. I wanted to safeguard my personal liberty.

Q Well, just to test your memory, and see how well you recall events generally, would you say that you heard about it before 1936 when the 4-Year plan was announced, or was it after that?

A It was possible that I heard something about it before 1936. I will look through my notes.

Q Well if you recall it later, why, you can inform us. I will go on.

A Yes.

Q At the time you resigned, on the 5th of May, 1933, the formal law on the organic structure of German economy, which prepared the basis for the "Gleichschaltung" or coordination, completely, of industrial associations of industry, had not yet been passed; is that right?

A No, not yet.

Q But even though the alleged legal basis was not there at that time, did you foresee that this Gleichschaltung would take place or not? And if you can answer Yes or No, please do so. It will save us some time.

A I have said before, and I repeat, that future developments were not concretely foreseen, by anyone, but I personally did not want to expose myself to the danger of such a development. I think that that is clear.

Q In what committees of Farben did you remain in an advisory capacity after the year 1937?

A I remained as advisor in the Economic-Political, and

in the General-Political Committee, which were in practice, identical. That was a so-called Kalle Committee.

On the other hand, I was no longer able to participate in the official committees of the Aufsichtsrat, that is specifically the Social Political Committee, because I was no longer a member of the Aufsichtsrat. I may remark that the Kalle committee, after the seizure of power, met only two or three times.

Q Did the Economic-Political Committee continue to exist up until 1944, as far as you know from any personal attendance at the Committee?

A No, with the increasing direction by the state, the activity of this committee was discontinued. I have already mentioned that there were two or three meetings. Mr. Kalle, - the Prosecutor may not be aware of this fact - was the chairman of the Kalle Committee as well as the Economic Political Committee. They were the same meetings.

Q Well perhaps it is clear you did not attend any committee meetings of I.G. Farben after 1937; isn't that true?

A There were two or three committee meetings of Farben that I attended after that. Furthermore the basic questions of I.G. Farben were discussed with me personally, especially by Geheimrat Bosen and by other gentlemen in private discussions.

Q As someone who had made an observable, outward protest against the Nazi regime, by resigning your position, were you also impressed by the protest which you heard raised yourself by the Catholic Church with respect to the Nazis; were you impressed by that too?

A The protest of the Catholic Church, unfortunately,

did not yet exist. I have taken the liberty of reading the letter of Cardinal Schulte of Cologne, where he says that an effort was being made to reach an agreement --

Q Just a minute, witness; if you don't understand the question, we will be glad to hear from you, but please do not suggest to me the questions I am to ask you.

THE PRESIDENT: Counsel, there is no occasion to address yourself to the witness. If you have any argument of that kind address yourself to the Tribunal, that is what we are here for. We will settle controversies between you and the witness.

MR. SPEICHER: All right. I ask the witness to please be responsive to the question and not volunteer information.

THE PRESIDENT: The point is, if he is not, tell us and we will instruct him. Let's start over again, ask another question and avoid controversy with the witness, -- arguing with him.

BY MR. SPEICHER:

Q I asked you simply whether or not you were impressed by the protest which you testified you heard were made, by representatives of the Catholic Church; were you impressed by them or were you not?

A From the moment of the protest on, yes, for I participated in these protests.

Q Did you hear about the protest which the Vatican issued; as a German citizen who is interested in what the Catholic Church's position was, did you hear about those protests, or did you not?

THE PRESIDENT: Counsel, how do you justify that cross-examination, asking about that. I do not remember of anything being asked about any protest of the Vatican. It

seems to me you are entirely out of the field of cross-examination now. You are opening up a door here that will entitle the gentlemen on the other side to come back, and I am afraid you are entirely out of the field of cross examination.

MR. SPEECHER: There were discussions concerning the protests made by the churches.

THE PRESIDENT: He made some remark of that kind, but as I remember his testimony, he was specifically quoting or reading from some correspondence between himself and some representative of the Catholic clergy.

Now that is one thing, and the attitude of the Vatican is an entirely different thing, and I think that it is outside of the field.

MR. SPEECHER: Very well, may I raise it in another way.

THE PRESIDENT: Yes, you may raise it in another way.
BY MR. SPEECHER:

Q Mr. Atence, was I wrong in understanding you to say that you had heard protests by the Catholic Church in Germany to the Nazi policy? I heard you testify to that, did I not?

A The protests of the Bishops were circulated by secret circular letters, and thus I also received knowledge of them.

Q Now in these circulars was it mentioned that the Holy See had indicated his policy against the excesses of the Nazis, or was it not indicated in these circulars?

A That was only to be seen by the Encyclical "With burning anxiety", of Pope Pius the 11th, which so far as I recall was issued in 1936 or '37. That was the first

elementary stand taken by the Vatican.

Q And you learned about that at the time did you not?

A Yes.

Q And there was criticism in the Nazi newspapers of the Holy See for taking that position, was there not?

THE PRESIDENT: Now again, counsel, I think you are getting outside of your field of cross-examination.

MR. SPRUCHER: Thank you, Mr. President. No further questions.

THE PRESIDENT: Is counsel through with this witness? Is there any further cross-examination, Dr. Dix?

DR. DIX: No, Your Honor.

THE PRESIDENT: Then the Tribunal excuses the witness, and the Marshal may escort him from the box.

DR. RUDOLF DIX: I ask permission to ask Mr. Sprucher something, before the witness is dismissed.

THE PRESIDENT: Just a minute, Mr. Witness.

MR. SPRUCHER: Dr. Dix has pointed out to me privately that perhaps there was an unanswered question in that the witness had not yet testified as to when he received the detailed knowledge of the 3 million contribution that resulted from the meeting of the 20th of February, 1933. Perhaps the joint question would do. Perhaps Dr. Dix could make it for me.

THE PRESIDENT: Very well.

DR. DIX: Mr. Sprucher said that, "that is enough; you can tell us that later". That was because the expert wanted to look it up in his notes. Now I ask him what is to be done, because the witness is leaving now. Is he supposed to tell us that in writing, or in a letter, or how?

THE PRESIDENT: If the witness wishes to correct his

testimony or supply any details before he leaves the stand, he may do so.

May I ask you, Mr. Witness, if there was some question you said you might answer by resorting to your notes? Have you had an opportunity to do that, to examine your notes?

THE WITNESS: No, Mr. President. My situation is such that my original material was destroyed in February '44, down to the last page, in an air raid. Consequently, it was enormously difficult for me to establish the facts, which after all, occurred 14 years ago.

I was able to establish the most important things only because at the most critical time of the Reich Association of German Industry, I wrote a letter to my wife every evening. She was in the Engdine after the death of a child, and those letters had been preserved. In this way I was able to reconstruct the general trend of events.

THE PRESIDENT: All right.

THE WITNESS: But on this concrete question --

THE PRESIDENT: That is sufficient, you are excused, Mr. Witness.

(Witness excused.)

DR. R. DIX: Mr. President, on this same subject I called three expert witnesses from various professions and walks of life. The necessary result, of course, is that my questions to these witnesses will be, in part, cumulative. I quite realize that; but I hoped that the fact that men with various backgrounds, answering questions from their own point of view, would give further clarification. As a precaution I should like to inform you that my questions, to a certain extent, will be cumulative.

THE PRESIDENT: Very well. There is no occasion for going over a lot of preliminary matter, in view of what counsel has said. It will be possible, I assume, to get quite directly to the substantial questions on the witnesses next to be called, and you ought to be able to accomplish that in very much less time, I assume.

Call your next witness, and we'll proceed.

DR. R. DIX: Then, with the permission of the Tribunal I call the Witness von Raumer.

THE PRESIDENT: The Marshal will bring in the witness.

HANS von RAUMER, a witness, took the stand and testified as follows:

Mr. Witness, will you please remain standing, for the purpose of being sworn to testify? And, now, raise your right hand if you will. Say "I," and state your name to the Tribunal.

WITNESS von RAUMER: I, Hans von Raumer.

THE PRESIDENT: Now, repeat after me the oath: ...swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing."

(The witness repeated the oath.)

You may be seated.

You may proceed, Dr. Dix.

DIRECT EXAMINATION

BY DR. R. DIX:

Q Mr. von Raumer, I should merely like to call your attention to the fact that what you are about to say has to be translated. There-

fore, will you please pause just a second after the question? Also, you have signal lights here: the yellow light means that you are to speak more slowly; the red light means that you must stop. Now, please give us your name and your place of residence.

A Hans von Reumer, Doettingen.

Q What were your positions and activity in political life?

A From 1920 until 1930 I was a member of the Reichstag, as a member of the Deutsche Volkspartei, headed by Stresemann. In 1920-21 I was Reich Treasurer; in 1923 I was in the Stresemann cabinet, as Minister of Economics.

Q What was your position in economy and industry?

A To mention the positions that are relevant here, from 1918 until 1933 I was at the head of the Central Association of the German Electrical Engineering Industry; also, from 1924 on I was Chairman of the Combine of Iron Industry in Germany. I was a member of the Vorstand of the Reich Association of German Industry and the Rhasia Committee of German Economy. Also, I was on very many Aufsichtsräte and on many Boards which had something to do with my main position.

Q On the basis of your experience and your memory can you tell us what the political attitude was of the representatives of I.G. Farben before the seizure of power?

A The politically most important men of Farben--Carl Bosch, Mr. Duisberg, and Mr. Kalle I knew very well personally; and I had an opportunity to discuss with them all current problems. Mr. Kalle was also a member of my party. The position of these men--their attitude--towards National Socialism was as hostile as can be imagined. I believe hardly any one of the great industrial concerns showed an equal hostile attitude.

Q Beyond that consideration, regarding all of big industry, is it true or false that industry supported Hitler's party in the seizure of power?

MR. SPEECHER: Just a minute. Mr. President, I don't know how

far I have to go into this objection, but it shows very basically the objection that the Prosecution had made, and the only objection the Prosecution had made, at the time the application was made for this witness. We objected there that insofar as Dr. Rudolf Dix would like to make this trial a testing ground for some type of allegation and issue, as to whether or not all of German industry was on trial. Then, we thought his application was incompetent, and we think, for the same reason, this particular question is incompetent.

THE PRESIDENT: We will be glad to have, very briefly, a statement from the Defense as to the competency of this matter, as you view it.

DR. R. DIX: Mr. President, in the Opening Statement of the Prosecution, not only in this trial, but also in other trials--other industrial trials--allegations have been made which the Defense is attempting to disprove. It was said in the Opening Statement of the Prosecution that the defendants, together with other industrialists, played an important role in the establishment of the dictatorship of the Third Reich. In another industrial trial General Taylor described--

MR. SPECHER: Mr. President, can we keep away from what was said in the Opening Speeches?

THE PRESIDENT: We're here not concerned with what General Taylor said, except as to what he said in the Opening Statement in this case, and I think you'd better limit your consideration of the Opening Statement to the one that was made in the Farben Case.

DR. R. DIX: Very well. This passage which I have quoted shows that here too the Prosecution makes the same accusation, as in other trials, that big industry as such, in their majority helped to bring Hitler to power. That attitude of the Prosecution is, in my opinion, the foundation of the entire Indictment. This is what they start out from.

THE PRESIDENT: Well, this Indictment does go beyond charging direct and personal responsibility of the defendants by charging them with having acted through the instrumentality of Farben, which has

opened a broad scope of inquiry, in that it is proper and appropriate to show what was done by Farben and what Farben policies were. If we go out of that field into industry generally we widen the scope of the inquiry very considerably. The Tribunal well recalls several instances in which the Prosecution was held down to the charges of the Indictment and was prevented from going beyond showing activities on the part of the defendants as individuals and of their part in the Farben organization. I think consistency requires that we hold the Defense to the same standard and reiterate what we have said that we cannot permit the trial of collateral issues. Insofar as this witness can testify as to matters of general knowledge and information, which we have permitted, or policies or practices on the part of the Farben organization or on the part of the defendants separately and severally, we will permit it, but it would not be proper, in our view, to make a showing here as to the attitude of industry generally, in view of the allegations of the Indictment. There is some foundation to what counsel has said in the Opening Statement of the Prosecution, but, after all, we have passed the period where the Opening Statement of the Prosecution controls the scope of evidence. That was important when the Prosecution was offering its evidence, but the situation is somewhat different; as far as the defendants are concerned, the scope of the inquiry now is the evidence which was offered by the Prosecution rather than the Prosecution's Opening Statement. The objection is sustained.

DR. DIX: Mr. President, then apparently I may not ask questions of the same substance as were put to the expert witness Lammers.

THE PRESIDENT: Well, it is not necessary to comment too much upon what you may do, but it perhaps would be inappropriate to remind you that you did make certain showings as to matters of general knowledge in the case of the prior witness and we would allow you the same field in inquiry with respect to this witness. But so far as showing the relationship of industry generally to the Nazi Party or the Hitler regime, that is not inconsistent with the same position that we took in the case of the prior witness.

Go ahead and ask the question. That's a better way to find out what the Tribunal will permit the witness to answer.

BY DR. DIX:

Q I ask you, what we call the upper class, from the point of view of sociology, whether industry, commerce or intelligentsia, was it this class which supported Hitler?

A The influence and the power of Hitler were based on the masses, and as far as the upper class is concerned, it either opposed him for the simple reason that it felt threatened by him, both in political influence and from the point of view of property because the revolution of the Nazis showed strong Bolshevistic trends. On the other hand, parts of the intelligentsia, for instance, the universities, the teachers, were, to a large extent, victims of Hitler's demagoguery and became his followers. That does not, however, apply to the industrial upper class.

Q Did all of industry and its leaders, especially these leaders of I. G. Farben, lose their freedom of decision in the course of events after 1933, or rather, was the management of their plants left in their hands?

A I believe one must realize to what extent the National Socialist revolution had seized power over all spheres of life. There was.....

MR. SPEECHER: Mr. President, the question was framed so that a simple "yes" or "no" answer would have indicated whether or not the witness had anything further to say on the subject and then, if there had been another question, we might have been able to do our duty in assisting the Court with respect to the relevancy of the matter. As it is now, the question merely sets off an answer which goes on for a long period of time and which doesn't even answer the question which Dr. Dix propounded, and I would like to request that the witness be instructed to make his answers responsive to the question.

THE PRESIDENT: Mr. Witness, there is merit in what the prosecution has said. Where you can answer a question "yes" or "no", you should do so with full realization of the fact that if counsel that is interrogating you wishes more details he is privileged to ask for them.

Now, in order to get the record straight and in order to get on the proper procedure, we shall consider your answer to the question as out of the record in order to permit you to follow the suggestion of the Tribunal. If you have the question in mind, answer it as directly and as simply as you can, and then if counsel wishes further information, wait for another question.

DR. DIX: May I say something? This gentleman is an expert and, according to your custom, an expert can be given a certain latitude in explaining his answers.

THE PRESIDENT: That is true. That is true, but where he can, where the question permits of a direct answer, it's better to answer it that way and leave it to counsel to pursue the inquiry further. The Tribunal is not suggesting that this witness is bound to answer questions "yes" or "no". Many can be, and where they can be, they should be in the interests of time, but if he wishes to make an explanation of his answer, we'll permit him to do it. Do you wish to ask another question, or

DR. DI : No. I want to ask the same question.

THE PRESIDENT: Very well. Repeat it then, Doctor, and we'll have the record straight.

BY DR. DIX:

Q Did I. G. Farben, as a part of industry, in the course of the development of the Third Reich remain a master in its own house?

A No.

Q Please explain this answer. Briefly, of course.

A The revolution had been so well prepared for that after only a few months a net-work had been drawn over the country in which not a single person was master of his own decisions and his own will.

Q If I now ask you what reasons there were for Hitler's consolidation of power, in the sense of his popularity, can you answer this question in this simple form?

MR. SPEECHER: Just a minute. Is it important to go in this proceeding into the question of Hitler's popularity? That seems to me an exceedingly broad topic. Objection.

THE PRESIDENT: Well, the objection is sustained in that. I hardly know what the question means myself.

Ask another question, counsel.

DR. DIX: Mr. President, I am trying to make clear to the Tribunal under what circumstances these defendants lived. Their actions can exist only in connection with the times in which they lived. It is impossible to present this entire period to you exhaustively, but it is my firm conviction that no matter how great your wisdom you will not be able to judge the actions of the defendants justly unless you give the defense some opportunity to describe.....

THE PRESIDENT: Counsel, the Tribunal wants to be helpful and kindly to you and we appreciate your disposition to help us. You say you are trying to convey to the Tribunal the circumstances and situations under which the defendants lived during the Nazi regime, is that correct?

DR. DIX: Yes. This too.

THE PRESIDENT: Then, Mr. Witness, if you can describe to the Tribunal the circumstances and the situations under which these defendants lived at the beginning of the Nazi regime, you may do so.

THE WITNESS: I do not know whether I can answer the question in the form in which it is put.

BY DR. DIX:

Q Answer it as you understood it.

A The question of whether Hitler could maintain himself depended on two factors. First, whether he was able to reduce unemployment and, second, what successes he could achieve against foreign countries. Those were the two problems with which he was confronted. He improved unemployment conditions surprisingly fast. As for foreign relations, he achieved all of the political successes which the Weimar Republic had failed to achieve and because of which the Weimar Republic had failed.

MR. SPEECHER: Mr. President, I'm sorry, but if this is responsive to any question concerning the compulsion under which these people lived or the general circumstances under which they lived.....

THE PRESIDENT: The Tribunal did not interrupt the witness because we thought perhaps it was just preliminary and that he was coming to it, but since counsel for the prosecution has spoken — Mr. Witness, what we are interested in is how the lives and activities of these defendants in connection with the enterprise of which they were a part were affected by the policies and practices of the Hitler regime. What limitations, what restrictions were placed upon their freedom of action and conduct. Now, if you can answer that, we'll be glad to hear you.

THE WITNESS: Well, the compulsion under which all German enterprises were placed was, for one thing, in the field of labor law, but secondly and mainly, in the field of the tasks set by the government, for very soon the tasks of the industrial firms were prescribed to them. Very

soon, they were no longer free and the more Hitler decided upon rearmament, the stronger became the supervision and the lack of freedom.

THE PRESIDENT: Now, Dr. Dix, you may go ahead with your examination.

BY DR. DIX:

Q How do you evaluate the attitude of these gentlemen on the question of war?

A It is quite out of the question that a big enterprise -- and for years I was active in the interests of such large industries in the field of electrical engineering -- it was quite out of the question for such industries which are dependant on international collaboration and international markets to have any interest in war which, according to experience, destroys everything that is built up in peace time. One need think only of the first World War when all foreign patents, etc., were lost. These big industries, whether they are chemistry, electrical engineering, are dependant on international exchange and patents and are very active in international collaboration. For such large industries, war meant the destruction of their work, even if the war should be won.

DR. DIX: Mr. President.....

THE PRESIDENT: It's time to recess for the day. We hope, counsel, that over the night you will be able to get your presentation organized in such a way that we can narrow this field down and get along a little more rapidly than we did today.

I think Judge Morris has something he would like to say to you.

JUDGE MORRIS: Dr. Dix, I would like to make a remark or two regarding the field of the expert witness as it is known to our Anglo-Saxon practice. Things have happened today that indicate to me that there is somewhat of a false impression of the privileges and prerogatives of an expert witness. The rules regarding hearsay, whether or not his testimony is relevant, whether it is repetitious, whether his answers are responsive to the questions asked him, are the same as any other witness.

He has no greater privileges as a witness with regard to those matters than the ordinary type of witness. The theory of an expert witness is that, because he is expert in his field and has certain knowledge above and beyond that of the ordinary witness, he may express opinions and his conclusions regarding matters that fall within the field of which he is an expert, and those opinions may be based on one of two things, or a combination of them. First, he may express his opinion with regard to matters of which he has personal knowledge and that fall within his field, or he may express opinions based upon hypothetical questions presented to him when those hypothetical questions are based upon matters that have been established by evidence in the case. However, the expert witness may not speculate and he may not go outside of the field within which he is an expert in expressing his conclusions or his opinions, and perhaps if you would consider that a little bit, Dr. Dix, in thinking over and framing your questions tomorrow, we might not get into so many difficulties with this witness as we encountered with the witness that testified most of today.

DR. DIX: Mr. President, just one remark to Judge Morris.

I had no other impression than what you have said about the task of an expert witness. The difficulties are that both the Tribunal and the prosecution are of different opinions regarding the limitation of the field and, for that reason, I have decided to ask this witness only one more question regarding Solmits and it would be better if I should ask this question today. Then the examination of this witness would be finished.

THE PRESIDENT: Very well.

BY DR. DIX:

Q Do you know Dr. Solmits?

A Yes, I have known him for years.

Q What is your opinion of him as a human being, politically, from the point of view of his work.

A As long as I had occasion to negotiate with I. G. Farben because of my own position in industry and especially to have political discussions, Karl Bosch, Mr. Duisberg and Mr. Kalle were always the representatives and I never heard that Mr. Schmitz, who was the finance minister of the I. G. concern, had any interest, I might even say, in such questions. I have to limit this testimony to the time during which I had contact with I. G. Farben on the basis of my position and this contact was broken off in 1933 when I was removed from my position.

Q A little more slowly please, witness.

A As for the personality of Mr. Schmitz, he was a highly respected and highly respectable man and I never heard any other opinion on him from any source.

Q Thank you. I have finished the examination of this witness.

THE PRESIDENT: Any cross examination of this witness?

MR. SPEECHER: No cross examination.

THE PRESIDENT: Any further examination by counsel for the defense?

Then this concludes the examination of this witness, and upon the adjournment, the witness will be excused.

The Tribunal will now rise until 9:30 tomorrow morning.

(A recess was taken until 0930, 21 January 1948).

Official Transcript of Military Tribunal VI, Case VI,
in the matter of the United States of America, against
Karl Krauch, et al, defendants, sitting at Nurnberg,
Germany, on 21 January 1946. Justice Shake presiding.

THE MARSHAL: Persons in the Courtroom will please find their seats.
The Honorable, the Judges of Military Tribunal VI.

Military Tribunal VI is now in session. God save the United States
of America and this honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: You may make your report, Mr. Marshal.

THE MARSHAL: May it please the Tribunal, the defendants Raefliger,
Schneider and Ambros are absent from the courtroom.

THE PRESIDENT: Those defendants have been excused for the day,
and we will proceed in their absence and with their agreement.

Are there any preliminary announcements, before we take up the
matter of cross-examination of the Prosecution's witnesses?

Have you anything, Mr. Prosecutor?

MR. SPRECHER: No, Mr. President.

THE PRESIDENT: Then, Dr. Boettcher, we will hear you, if you
are ready to report on your conference of yesterday afternoon.

DR. BOETTCHER: Dr. Boettcher. Mr. President, the conference of
defense counsel, which took place yesterday afternoon, discussed the re-
port of the Commissioner and came to the following result. The opinion
expressed by the Commissioner in this report is not considered correct
by the Defense. He assume that the responsibility in the further course
of handling the affiants is in the hands of the Defense, since the prose-
cution has stated that the sixteen other affiants cannot be produced for
cross-examination. The reasons for this conclusion are as follows, in the
eyes of the Defense. As far as we know under the rules of American pro-
cedure it is the obligation of the party submitting an affidavit to pro-
duce the affiant for cross-examination, if required. If this is not pos-
sible, then the other party has three possible courses of action: First,

to suggest that a questionnaire be worked out to be sent to the affiant. The Defense declares that they will not take advantage of this possibility of sending questionnaires to the affiants in any case, since they do not expect any practical results from this procedure.

The second possibility is that an application be made that the affidavits be withdrawn because the affiant cannot be produced for cross-examination. The Defense declares that, at the moment, they will not make any such application. They are of the opinion that such applications can be made up to the time of the end of the case.

The third possibility arising from the other two, is to do nothing at all, on the part of the Defense that is, and to leave it up to the Tribunal to evaluate the affidavits when the Prosecution cannot produce the affiants for cross-examination.

That is the basic attitude of all the defense counsel. Now, I should like to say a few words on another point. That is in connection with a statement of the question of how the cross-examination of these affiants is to be handled, and the motion of the Defense of the 17th of December 1947, about a decision on Count I and parts of Counts 2 and 3 of the Indictment.

The Tribunal has stated that the decision on this motion will depend on how the cross-examination of the remaining affiants develops. I take the liberty of making the following statement: First of all, of all the outstanding affiants only one is connected with Count I; that is the Witness Jacobi. In the name of the defense counsel I might state that we herewith dispense with the cross-examination of this witness. All the other affiants, with the exception of two, whom I shall name in a moment, are on Count 3 of the Indictment. I have only a few words to say about the Witnesses Dr. Joham and Rottenberg who live in Vienna. Regarding the examination of these witnesses I took the liberty during the session last Friday to suggest that the Tribunal or the Commissioner go, with representatives of the Prosecution and the Defense, to Vienna and examine these witnesses; but no matter now this question is decided I take the

liberty of pointing out the following: The decision about the application of the 17th of December, in the opinion of the Defense, is not dependent on whether and how those witnesses testify in cross-examination. The reason for this point of view is in the application of the 17th of December the request was made, for legal reasons, about the consideration of what the facts are. A request was made that a decision be reached that the defendants could not perform any offense against Austria and the Sudetenland, according to the decision of the International Military Tribunal. In the opinion of the Defense, therefore, the decision of the Tribunal and the motion of the 17th of December on Count II of the Indictment is in no way dependent on the testimony of the Witnesses Johan and Rottenberg. The decision on the motion of the 17th of December, therefore, in the opinion of the Defense, can be reached now, because the cross-examination of no witnesses is outstanding on Count I, and the two witnesses outstanding on Count II are not necessary for the decision.

Dr. von Metzler has just pointed out to me that on Count 2 there are not only the two witnesses, Dr. Johan and Rottenberg, but also two Czech witnesses and a Polish witness, who have yet to be cross-examined. This does not, however, change the thesis which I have taken the liberty of presenting. The same is true of the two Czech witnesses as for the Austrian witnesses, as regards any plundering in Czechoslovakia. We made application for a decision that there can be no prosecution on this charge. As regards possible plunder in Poland, a motion was not made for a decision on the 17th of December.

THE PRESIDENT: The statement of counsel for the Defense has embraced a number of angles of this matter, which I trust that I have kept in mind sufficiently to make known the views of the Tribunal concerning them. If I have not, I hope my associates will feel perfectly free to supplement anything that I have to say.

The Tribunal, as counsel well knows, entered an order, transferring to a Commissioner, the supervision of the cross-examination of some forty or fifty witnesses. In every instance these witnesses had not appeared before the Tribunal, but their affidavits had been received. It was the view of the Tribunal, at the time the order was entered, and now is, that the cross-examination of these witnesses could be conducted before a Commissioner without any loss of substantial rights to the defendants. There is no matter involved of the Tribunal's having been impressed with the personalities of the witnesses because the witnesses have not been before the Tribunal; and we thought then, and still think, that with the Prosecution's evidence, consisting of a written affidavit, a transcript of the cross-examination would be on a same par and level, and, consequently, there would be no prejudice to the rights of the defendants in asking that the Tribunal be relieved of the burden of supervising the cross-examination of this group of witnesses who have never personally been before the Tribunal. I think we have made our views clear in that regard in the past.

Now, there have been, it appears in the report of the Commissioner, a number of cross-examinations conducted in the absence of the Tribunal. The transcripts of these cross-examinations is in the record of the case. It appeared at the time the Commissioner made his last report that there have been twenty witnesses that have not been produced for cross-examination. We are advised that, since that time, two have been examined, which reduces the number now to eighteen, as we understand it. Submitted with the report of the Commissioner was the verified statement of a member of the staff of the prosecution to the effect that it was impossible, in his opinion, to produce these witnesses for cross-examination. While we have not closed the doors, so far as the showing is concerned, and are open to be

evidence or statements on behalf of the counsel for the defense that one or more of these witnesses may be produced, in the absence of such a showing we would accept the statement of the Prosecution under oath as *prima facie*, showing the unavailability of these witnesses. As I say, if there is any misunderstanding about that and any of these witnesses can be produced at some convenient place before a Commissioner to be cross-examined, we will be glad to consider that matter. In that connection, however, it was suggested that there were two witnesses in Vienna which the Defense particularly wishes to personally cross-examine. We have that matter under consideration, and at the proper time we will discuss with counsel whether or not some arrangements can be made to give them the benefit of an oral cross-examination as to those two witnesses. I have only this to say-- that it is entirely possible that before too long some other tribunal will be wishing to have this courtroom, when we should like to be in session, to announce a verdict or conduct some other session, so we, perhaps, can make some arrangement on a week-end that would make it possible to conduct the cross-examination of the two witnesses in Vienna.

Now, as to the use of questionnaires. What I have said relative to the supervision of the cross-examination by a Commissioner appears to the Tribunal as being equally applicable to the use of questionnaires. We can well see, of course, that if the witness has personally been before the Tribunal for examination, it might be harsh and it might be unfair to subject the other party to the use of questionnaires for cross-examination. But, bearing in mind that all that we have seen and will see from the Prosecution in connection with these witnesses or affidavits, the Tribunal is firmly of the opinion that the substantial right of the defendants would be preserved by the use of an appropriate questionnaire for the purpose of cross-examination. We were hopeful that a number of these cross-examinations might be handled in that manner.

Now, as to one other feature of the case, and that is the motion for a dismissal on Counts 1, part of Count 2 and Count 5, the Tribunal expressed itself as reluctant to pass upon those motions until the

Prosecution's case was finally closed. We said early in the trial that the manner in which the Prosecution presented its evidence was under the control of the Prosecution and that when we reached the Defense the same rule would apply. The Prosecution saw fit, in the preparation of its evidence, to follow the general plan of the Indictment, that is following it by counts. That is a matter of choice and convenience on the part of the Prosecution. We also said that while we would receive affidavits, we would permit the Prosecution to supplement the affidavits by the oral testimony of the makers of the affidavits when they were produced, and we followed that in the course of the hearing of the prosecution's case. Now, in view of that, we have no way of knowing that if, for example, the witness in Vienna, whose testimony you say applies to Count 1 or Count 2, as the case may be, is produced before the Commissioner or before the Tribunal, in Vienna, the Prosecution is not bound by any means to limit its evidence to that affidavit. It may see fit to go outside the course of that affidavit and offer evidence on Count 5 or 1 and be clearly within the right — of course subject to cross-examination. The point I'm trying to make is that until this case is closed, as far as the Prosecution is concerned, the Tribunal has no assurance as to what the sum total of the evidence is going to be on behalf of the Prosecution, and the Tribunal would find itself in a most unhappy situation if it should pass upon a motion testing the sufficiency of the evidence as to the defendants as a whole, or any one, and still find afterwards that some evidence comes in that might bear upon the matter that we have passed upon. That is the reason why we said that we thought it only fair to the Tribunal to close the doors, so far as the prosecution's witnesses are concerned, before we pass upon a motion calculated to exonerate any of the defendants, or all of them, as to a part of the charge; and, until that is done, we have no assurance whatever that the evidence to be heard might relate to the matter presented by the motions now under advisement.

Now, that, I think is all I have to say personally with respect to the general features of this matter. We are concerned, for two reasons, in concluding the cross-examination of these witnesses in some manner fair

to the defendants as soon as possible: the first is for an orderly procedure. That should have been done before we started on the Defense; we started hearing the Defense upon the assumption that we would be able to conclude that without too much delay. The second is that until we know the sum total of the prosecution's evidence it is not right to ask this Tribunal to pass upon a motion which, in effect, says that the evidence does not sustain the charges under the applicable law, and discharge the defendants so far as a part of the Indictment is concerned. As I understand from your remarks, Dr. Boettcher--may we understand that the cross-examination of the witness Jacobi is now formally waived?

DR. BOETTCHER: Yes.

THE PRESIDENT: Very well, the record will so indicate.

And I say to you, with reference to the two witnesses in Vienna, the Tribunal will undertake at some convenient time to work out some method that will preserve to the interested defendants the right to cross-examination those witnesses, either before the Tribunal or before some Commissioner. We'll discuss the details of that later. Now, as to the other remaining witnesses, the Tribunal is still of the opinion that the Defense ought to do one of three things: It ought to be in position to challenge the statement of the Prosecution, that those witnesses cannot be produced, either here or somewhere else, for cross-examination before the Commission; it ought to waive the cross-examination of those witnesses; or it ought to resort to questionnaires in lieu of cross-examination.

JUDGE MORRIS, is there anything you wish to say in connection with that matter?

JUDGE MORRIS: No.

THE PRESIDENT: Judge Robert?

JUDGE ROBERT: No.

THE PRESIDENT: Judge Merrell?

JUDGE MERRELL: No.

DR. BOETTCHER: Dr. Boettcher. Mr. President, I have taken note of the three possibilities which you have just mentioned. I should surely

take the liberty of emphasizing one more thing. The Defense will not take advantage of the opportunity of sending out questionnaires. The Defense does not consider this method adequate or suitable, because experience has taught us that it is only from conversation with a witness that the possibility develops of attacking his testimony. From correspondence the Defense expects nothing but unproductive work for everyone concerned; therefore, the Defense has two possibilities to consider—the two points which you, Mr. President, mentioned as No. 1 and No. 2.

THE PRESIDENT: Has the Defense considered the possibility of the use of counter affidavits from the affiants, as to whether or not that would serve the purpose of a cross-examination?

DR. BOSTTCHER: I might say quite frankly, Mr. President, that we have not discussed this possibility yet. I believe I may say that we are grateful for the suggestion; I shall note it down, and we shall discuss it.

THE PRESIDENT: Well, of course, this is primarily a matter between counsel for the Defense and the Tribunal, but perhaps it would be only fair to allow the Prosecution to make its observations and express its views on the subject.

Have you anything to say, Mr. Sprecher?

MR. SPRECHER: Perhaps what I have to say is largely because, Mr. President, I wouldn't want any dilance on my part to be misinterpreted by any one who might read this record, and partly because I think there's a certain effort by the defense to get an interpretation of law by virtue of sheer repetition of matters which are not so.

Now, I might start with the last point. I suggested to the defense, many times, cross affidavits in those cases where the affiants were obviously very friendly to the defense. I only have to refer to the fact that at least half of the affiants, who have appeared in this Court Room at the request of the defense, have been former officials of I.G. Farben. At the time I told them: "These gentlemen, these affiants will give you what you want in your affidavits and you can introduce them as cross affidavits and we will save a lot of time." That was done in not one case.

Now, in this case, apparently, we are being requested to assume that only some rules which the defense considers to be rules of American procedure are applicable. Quite apart from what those rules might be, I think I no longer have to repeat that we are working underneath international law and that the rules adopted here have to be adjusted to the requirements of what, in the long run, given the circumstances under which we operate, will bring out the most truth and in a way that is not too burdensome. Some of the defendants present will remember that certain affidavits were introduced by the defense before the IAT, or certain interrogatories were introduced before the IAT where the defense had written letters or questionnaires, through the Secretary General, to very high people in foreign governments, and I may say, in some cases, some of those questionnaires were very effective and, I think, established exactly the point which the defendants had in mind. To have not even had, in this case, one example of an effort by any defense counsel to attempt to find out what could be done and we are now in the month of January and affidavits have been introduced in this case for at least four months, and we could have had the benefit of some experience in seeing how that would work out. Dr. Boettcher

says: "Experience has taught us." Where is this experience?

Now, of course, it would be entirely wrong to say that these witnesses have only to do with Count I or Count II or Count V, Count III, but I don't think I have to repeat that matter here.

Thank you.

THE PRESIDENT: I will add just this to what has been said before, that this Tribunal is conscious of its responsibility to see that the rights of these defendants are preserved; that they have a fair and impartial trial; that they have a reasonable opportunity of meeting the evidence that is produced against them. In whatever disposition we make of this matter, we will try to keep those fundamental objectives in mind. The Tribunal will take this matter under advisement and, before too long, enter a formal order putting the matter at rest in some manner or other. We shall assume now that the views of counsel for the defense and the prosecution, as to all matters pertaining to the merits of this subject, have been fully presented and that the Tribunal now has the benefit of the observations of counsel bearing upon that matter. As soon as the Tribunal has an opportunity to confer and to formulate a program, we shall announce it publicly and place it upon the record.

Counsel for the defense may now proceed with the presentation of its evidence.

DR. SIEGERS (Defense Counsel for defendant von Schnitzler): Your Honors, may I say just a word or two on the last point of the statement made by Mr. Sprecher? Would the Tribunal be willing?

THE PRESIDENT: Surely, surely.

DR. SIEGERS: Mr. Sprecher has just discussed the procedural disagreement and has said that it is not American law which is applied here, but that a decision is to be made on the basis of international law and on the basis of common sense because it is international law. Your Honors, this point of view may be correct so far as substantive matters are concerned, but I am not aware that there is any established

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Counsel for the defense may now proceed with the presentation of its evidence.

DR. SLEJERS (Defense Counsel for defendant von Schnitzler): Your Honors, may I say just a word or two on the last point of the statement made by Mr. Sprecher? Would the Tribunal be willing?

THE PRESIDENT: Surely, Surely.

DR. SLEJERS: Mr. Sprecher has just discussed the procedural disagreement and has said that it is not American law which is applied here, but that a decision is to be made on the basis of international law and on the basis of common sense because it is international law. Your Honors, this point of view may be correct so far as substantive matters are concerned, but I am not aware that there is any established

procedure in international law which has been applied, up to now, in any of these courts. On the contrary, in general, the principle has always been to adopt the procedure of Anglo-Saxon law. This is shown in the basic principle of the examination of witnesses. That is, direct examination, cross examination, redirect examination, etc. It is shown by the fact that the Tribunals have repeatedly pointed out that the party which called a witness is responsible for his credibility. This strict differentiation between the witnesses of the two parties exists in Anglo-Saxon law, but not in continental law. I do not believe, therefore, that from the procedural point of view, one can speak of an observance of international law here but, if the principles of direct and cross examination are applied, I believe it is only fair if the defense is at least granted an opportunity to call a witness, an affiant, for cross examination. That is, to be given an opportunity to examine him personally before the Court or before the commission, and, in any case, to examine him personally. That is the decisive point which has been observed, up to now, in all these trials.

Of course, there are other possibilities and I agree that, as far as possible, one should not be stubborn but should decide on the basis of the individual affidavits and their various degrees of importance, but there must always be an opportunity in especially situated cases to have the affidavit withdrawn if the party concerned - that is, the prosecution in this case - cannot produce the witness for cross examination.

Now, Mr. Sprecher also says that the defense can offer cross affidavits since 50% of these witnesses are friendly witnesses. That may be right, but, in Mr. Sprecher's own words, it is not possible in the case of all the witnesses. If there is a witness in Poland whom the prosecution cannot induce to come here, or if there are witnesses who cannot be found, then we, as defense counsel, have no way of getting a cross affidavit from such a witness, quite aside from the doubtless unfriendly attitude of the Polish witness.

And now, the third and final point. Mr. Sprocher said that in the DMT trial there had been good experiences with questionnaires. That is doubtless true, and one can expedite the trial in that way, but I may remind Mr. Sprocher that, as far as I remember, those questionnaires in question were questionnaires which the defense sent to their own witnesses. That case was different from the case with which we are concerned here, where it is a prosecution witness who has already given an affidavit in favor of the prosecution. I may recall only one thing. Perhaps the best known case was Admiral Nimitz. Admiral Nimitz did not give the prosecution an affidavit. He merely answered a questionnaire sent out by the defense. I believe that Mr. Sprocher's parallel is, therefore, not quite applicable.

THE PRESIDENT: Gentlemen, it is not in the interests of any of us to unduly prolong this discussion. I am tempted, however, to make two observations in view of what Dr. Siemers has said. This Tribunal is not, at this time, presently concerned with determining whether or not what we are about to do in dealing with this subject, complies with international law or Anglo-Saxon law or any other system of legal jurisprudence. The Tribunal is approaching the problem of giving these defendants a fair and impartial trial upon a basis that would meet the requirements of any enlightened system of jurisprudence, and we'll leave the fine distinctions as to the application of international law or Anglo-Saxon law until such time as we reach the discussion and argument of the applicability of those principles. So much for that.

Dr. Siemers has admitted that there may be some instances where counsel for the defense might find a friendly disposition among the makers of these affidavit that would admit of counter-affidavits, but says that in perhaps 50% of the cases that would be impossible. I just offer this friendly suggestion to counsel for the defense. If we had the hearty cooperation of the defendants in using the available means at hand to provide the substance of an applied cross examination where it can be utilized, it might, to a very large extent, influence the

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disposition of the Tribunal with respect to dealing with those where that would not be possible. By that I mean to say, looking at this thing from a practical standpoint, if there are, among these eighteen outstanding witnesses, seven or eight or nine where you could use counter-affidavits and you should see fit to use counter-affidavits, it might very substantially influence the handling of the remaining witnesses in those instances where you could not reasonably be expected to use counter-affidavits. That is merely a friendly suggestion for what it may be worth to you.

Counsel may proceed with the defense.

DR. RUDOLF DIX (Defense Counsel for defendant Schmitz): Your Honors, I should now like to call Geheimrat Kastl as an expert witness.

THE PRESIDENT: The Marshal will bring in the witness.

LUDWIG KASTL, a witness, took the stand and testified as follows:

THE PRESIDENT: Mr. Witness, will you please remain standing for the purpose of being sworn as a witness, raise your right hand, say "I", and state your name to the Tribunal.

THE WITNESS: I, Ludwig Kastl....

THE PRESIDENT: And now, will you repeat after me the oath.

Swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

You may be seated.

The witness is with the defense.

DIRECT EXAMINATION

BY DR. DIX:

Q Geheimrat, in your testimony, will you please observe the following technical rules: after my questions, please make a short pause before your answer because both question and answer have to be translated. If you should speak too fast, you will see a yellow light. Then, please speak more slowly. If you are to stop, you will see a red light.

Q Mr. Kastl, please tell the Tribunal the position which you have held in the economic political field during your career.

A After fourteen years of work as a colonial official in German South-West Africa, I was Department Chief in the Reich Finance Ministry in Berlin, and I was in charge of the reparations department there.

From there, in 1925, I became a managing member of the Presidium of the Reich Association of German Industry. I left the Reich Association of German Industry, in 1933, because of the National Socialist Party. From 1929 until 1932 I was a member of the Mandate

Commission of the League of Nations. In 1939, as a German expert, I was a member of the Young Committee and participated in the negotiations in Paris on the Young Plan. I signed the Young Plan. From 1933 on, after one year of struggle about my admission, I became a lawyer in Berlin and, later, in Munich, and I am still that today.

Q In I.G. Farben, before 1933 and after 1933, who was responsible for the political and economic political decisions?

A From my work with the Reich Association of German Industry, I know that there was a so-called Verwaltungsrat in I.G. Farben which set up the political and the economic political directives of this organization.

Q Who belonged to this board?

A As far as I recall, the members of this committee were Mr. Duisberg, Mr. Kalle, the two Weinberg Brothers, Mr. Oppenheim, Mr. von Simson, Mr. Plieninger, and I assume, Mr. Rath and, as Director General of I.G. Farben, probably Mr. Bosch was also a member.

Q Were there any Jews among these gentlemen?

A Yes, the Weinberg Brothers, Mr. Oppenheim, Mr. von Simson, who was the son-in-law of Mr. Oppenheim. Whether any of the others were Jews I do not know, but it is possible.

Q Was Mr. Schmitz one of these men, the political group or Verwaltungsrat?

A Not as far as I know.

Q Did any of the other defendants belong to this group?

A I do not believe that members of the Vorstand belonged to this Verwaltungsrat.

Q Did you know Mr. Schmitz?

A Yes.

Q Do you know any of the other defendants?

A Yes. I know Mr. von Knieriem, Mr. von Schnitzler, Mr. Gattineau, Mr. Ambros. I know the other gentlemen slightly. I may have seen them, but Mr. Schmitz and Mr. von Knieriem were members of a group

which met at a club in Berlin and which ate breakfast together regularly. Some other I.G. Farben men sometimes ate with us. We used to call this, jokingly, the "Radish Table" because of a slightly red tinge. That came from our collaboration with Socialist Governments and with the unions.

Q What was the political attitude of Mr. Schmitz?

A As far as I know, Mr. Schmitz had a great deal of work, especially in the finance political field and, consequently, took very little interest in politics, but Mr. Schmitz was more inclined to the Left than to the Right. He is friend, and I might say his political mentor, was Mr. von Moellendorf, the well known plant economist who has died in the meantime, and he certainly tended towards the Left. Mr. Schmitz always advocated collaboration with labor and union representatives and with all foreign countries. If I speak of the activity of I. G. Farben and its representatives in the Reich Association of German Industry, I may say that I.G. Farben was the firm in Germany which was the strongest advocate of collaboration with other countries and cooperation with labor. It always took a mediating attitude in social political matters. This was not the case

MR. SPEECHER: Mr. President, the question started out to be a question with respect to what the witness knew directly about Schmitz' attitude. The answer has wandered on to a lot of things including labor, relations to foreign countries, whether he tends to the Right or to the Left, and there is, under such circumstances, no possibility for the prosecution to attempt to have the issues of this case confined or perform, in a fair way, its function. I think Dr. Dix is aware of this, and I would like to request the Court to request counsel to be helpful in making some specific questions so that he gives to the other side a chance to perform its functions fairly.

THE PRESIDENT: Now, counsel for the prosecution, there is no occasion for undue heat in this matter. The prosecution had a pretty wide field in the introduction of its evidence, and certainly this Tribunal is not going to impute any bad motives to Dr. Dix. His question was proper, in our view, and while the witness may somewhat have wandered away from it, counsel for defense is not to be criticized for that. I think it is fair to say that the question has perhaps been answered. The answer will stand and Dr. Dix may ask his next question.

DR. DIX: I should like to ask the witness, since I asked him about Mr. Schmitz' political attitude, to give a few concrete examples to explain his answer, as he began to do. If I may make this remark to the Tribunal, a political attitude includes an attitude towards other countries and an attitude towards labor.

THE PRESIDENT: If you will pardon the suggestion, Dr. Dix, I think it might be helpful, to avoid any misunderstanding, if you would again direct the subject of your inquiry to the witness. Are you talking about Dr. Schmitz or about Farben? Just which ever you choose to ask about is all right, but perhaps if the witness knows whether you are inquiring, for example, as to the attitude of Schmitz or, for example, as to the attitude of Farben, it may avoid an objection here. Which do you have in mind?

DR. DIX: I asked merely about the political attitude of Mr. Schmitz. The witness said he knew him well. I shall also ask him about the other defendants, but I do not know whether the witness can give a good answer. Witness, will you please continue to tell us about the political attitude of Mr. Schmitz?

A Yes. I believe I had already said what I know about Mr. Schmitz's political attitude. In the years from 1920 to 1933 I repeatedly talked to Mr. Schmitz about political questions, especially from 1929 to 1933 I repeatedly talked to Mr. Schmitz about political questions, especially from 1929 to 1932 or 1933, when National Socialism was becoming stronger and more influential. I found that Mr. Schmitz was definitely opposed to it. His innermost nature would have forbidden him from taking any approving attitude here.

BY MR. DIX:

Q Aside from the personal political attitude of Mr. Schmitz, can you tell the Tribunal anything about the political attitude and the leading representatives of I.G. Farben or any of the other defendants.

A Those of the I.G. representatives whom I knew was Geheimrat Duisberg, who was a very close friend of mine. Geheimrat Duisberg was a man who was in every respect a man in favor of international cooperation and strongly in favor of social measures. He was of a conciliatory nature. He had been abroad frequently and he always realized that he would have to oppose any regime like National Socialism. The same was true of Mr. von Sison who was also a close friend of mine. The same is true of Mr. Kalle. The Weinberg brothers and Mr. Oppenheim, in their cases it was a matter of course because of their race. But Mr. Bosch, who is not a friend of mine, but whom I met frequently, the same applies to him.

Q You mentioned Duisberg. What was Duisberg in the Reich Association of German Industry?

A When I entered the Reich Association of German Industry in 1925, Duisberg was president of the Association and he remained president until 1931.

Q Was any other representative of Farben in the Presidium of the Reich Association for Germany Industry?

A Yes.

Q Who?

A Mr. Bosch.

THE PRESIDENT: Now counsel, the Tribunal has permitted you, and I think properly, to make a showing as to the position and attitude of the leaders and executives of Farben, at a time remote to the one under inquiry upon the theory that that may throw some light upon the attitude that continued through the years, and related to the period that we are concerned with. But certainly there ought to be some limitations on that and it ought not be pursued too far. After all, these individuals about which you have inquired and the witness has testified are not defendants. I think I am safe in saying from what has appeared in this trial, that they are deceased, and while their state of mind, their attitude on political issues, might have some remote bearing in the way of affording background, and the prosecution offered some evidence of background, we think there ought to be some reasonable limitation on that, and that you should not pursue that inquiry too far, Dr. Dix. I think perhaps there has been enough of that.

DR. DIX: Mr. President, the intention of my question was misunderstood. I wanted to set up a bridge from I.G. Farben to the Reich Association of Industry and determine whether this Reich Association of Industry and determine whether the Reich Association of Industry was also influenced by the political attitude of the Farben men mentioned by the witness. That was the purpose, and in order to simplify Mr. Sprecher's objection, I should like to announce that I now intended to ask the witness about the political attitude of the Reich Association, a question which the Tribunal permitted yesterday.

THE PRESIDENT: We did permit it yesterday and that is all the more reason why we should not permit too much of it today. As I remember your evidence yesterday, the Reich Association of Industry, if I am

correct, passed out of the picture with the coming of the Hitler regime. And while it may be proper within some reasonable limitations to show the participation of Farber in the Reich Association of Industry, and the attitude of the Reich Association of Industry with reference to the Nazi program, we have already permitted you some leeway in that and you should not carry it too far, because after all that is only background and preliminary to the major and fundamental questions with which we are concerned. Now, the very fact that you did go into it yesterday is all the more reason why you shouldn't go too far into it today, because there is a limit to the extent to which that evidence is of any aid to the Tribunal. So if you do propose to interrogate the witness on that score it should be quite brief and to the point and a question or two should suffice. Then if you want to show the attitude of Farben at the time under inquiry, after 1933, up until 1944 or 45, or the attitude of those defendants, we will allow you all the time you need.

DR. DIX: Mr. President, I should like to ask the following for clarification. May I ask this expert witness what the attitude of the leading men of the Reich Association of German Industry was in a political respect?

THE PRESIDENT: You may do that if you do it briefly. The only point is, we don't want to spend too much time on that because it's collateral to the issue under inquiry. If you want to ask one or two questions under that score we will permit it. Go ahead and ask your questions.

BY DR. DIX:

Q Two very brief questions. What was the attitude of the leading men of the Reich Association of German Industry in political respects specifically considering their relationship with the National Socialist movement?

A In the years before 1933 it was quite clearly shown that the National Socialist movement was gaining momentum constantly, and consequently

the results of the National Socialist election victory were discussed in the Reich Association. And I can say that the attitude of the Presidium, with perhaps one exception, was completely opposed.

Q Was all of German industry organized in this Reich Association?

A Yes, seventeen hundred associations belonged to it.

Q What was the attitude of the leading men of Farben on the question of war?

A The attitude of the leading men of Farben, as far as I know it, and as far as I could talk with them after 1933, was opposed to why it had to be so. Anyone in charge of an enterprise like Farben can only wish for there not to be a war.

Q Does this opinion of yours and this testimony of yours apply to all of industry?

A Yes.

Q Will you please explain briefly why —

THE PRESIDENT: Counsel, if you are going into the reasons for the positions of all of industry, you are getting too wide a field here and opening up a field of inquiry that would be almost limitless. We have permitted you now to show the attitude of industry generally, the Reich Association particularly, and I think that from now on you had better get down to what we are really trying here and that is the attitude of the defendants and the company with which they were affiliated. You have had a reasonable latitude in showing background and I think that we have heard perhaps all we need to hear on that score.

DR. DIX: Mr. President, I have only one more question on this point and that is whether it is correct that the Reich Association of German Industry publicly and officially declared its allegiance to the Democratic Constitution of Weimar. That is the only question that I have.

THE PRESIDENT: Very well, Doctor.

WITNESS: Can I answer?

THE PRESIDENT: Are you asking the question or waiving the question?

DR. DIX: No, I am asking the witness. May I repeat the question. Did the Reich Association declare its attitude toward the Weimar Republic publicly and what was the attitude?

A Every year the Reich Association held a big general assembly and every year such a declaration was made. Often very definite statements were made as for example in 1935 the Presidium member, Dr. Paul Silberberg and later in 1938 Mr. Lammer, and so forth.

THE PRESIDENT: Now Dr. Dix, just in order that there be no misunderstanding, we are in agreement now that you are over your background with reference to German industry and the Reich Association of Industry and that you will now limit your inquiry to matters that relate either to the defendants as a group, individually, or as a part of Farben, and I think we will get along all right.

BY DR. DIX:

Q Mr. Kastl, before I ask you the next question please give the Tribunal a definition of the concept "Arbeitsgemeinschaft" (Work Community). Mr. President, I am asking this question because this word was not translated yesterday and

and could not be translated properly. Please give us a definition.

A The word "Arbeitsgemeinschaft" means essentially collaboration between industry and labor. If one speaks of Arbeitsgemeinschaft in the specific sense it is a contractually determined agreement to cooperate and consult each other on all important questions.

Q That is sufficient. Now, the leading men of Farben — what was their attitude toward this question of Arbeitsgemeinschaft?

MR. SPRECHER: Can we place the time, because the word "Arbeitsgemeinschaft" had, I think, a quite different meaning after the German Labor Front of the Nazis came and before the 2 May 1933 when there were still trade unions.

THE PRESIDENT: As to what time are you inquiring, Dr. Dix — before or after 1933?

DR. DIX: Mr. President, that is an idea — a concept — that has nothing to do with time. It has nothing to do with the Labor Front which my learned colleague speaks of and the misunderstanding shows, I beg your pardon if I have to say this, how necessary it is to explain certain fundamental German concepts.

THE PRESIDENT: The witness has given his idea of the meaning of the word — at least we got it, in English — and you may go along, but let's remember your agreement now with the Tribunal that your inquiry from now on should relate to the attitude of the defendants and Farben and not to some remote period of time.

DR. DIX: Mr. President —

THE PRESIDENT: There is nothing before the Tribunal. I am just reminding you of what we agreed upon — that your questions from now on would relate to the defendants individually, collectively, or as a part of Farben, and not to German industry as a whole, or the Reich Association of Commerce or Industry.

DR. DIX: Mr. President, I asked a question, what was the attitude of the leading men of I. G. Farben toward the concept and the institution of the "Arbeitsgemeinschaft".

THE PRESIDENT: If you have in mind Mr. Daisberg and men of that period of Farben history, we are unconcerned with it now. If you mean a period when these men were connected with Farben your question is entirely correct. We are only asking you to fix the time or the individuals about whom you are asking. Farben is an old enterprise and we don't want to go back too far now. Do you understand what I am driving at? Very well.

DR. DIX: Part of the defendants are affected — perhaps not all of them.

THE PRESIDENT: Very well.

BY DR. DIX:

Q Mr. Kastl, should I repeat my question or do you remember it?

A Please repeat it.

Q What was the attitude of the leading men of Farben towards the question and the problem of the community works the "Arbeitsgemeinschaft", in the sense in which you have defined it just now?

A The I.G. Farben as such and its representatives in the Reich Association of German Industry, were always very strongly, much more strongly than the other firms represented in the Reich Association, in maintaining the works community. I know that in 1933 the Labor Front was created and that it was regretted because the basis for cooperation was no longer as good as formerly. There no longer were any trade unions. They had been destroyed.

Q For the men of Farben was there any opportunity after 1933 to oppose political or economic measures taken by the government?

A There was no such opportunity for the Farben men any more than there was for any other industrialist in Germany.

Q Why not?

A The National Socialist government had, from the very beginning, promulgated a number of laws for its own protection. One of the more important was the so-called Law against malicious attacks and other laws specifically designed to protect the government. Everyone who would dare to oppose the government risked punishment, risked interference in his business, and leaving the personal consequences aside, but the danger of interference in his enterprise had to confront every leader of such an enterprise with the great struggle in his conscience — which shall I do, shall I follow or shall I resist. This question confronted all kinds of businessmen every day and the conflicts and qualms of conscience were great. That was shown in my practice. Pressure was exerted on these men to become party members. The people didn't know what they should do. Sometimes I gave them rather simple advice to say that the wife of this person who was to become a Party member was not racially quite pure according to the Nurnberg Laws and that he didn't want to become a member of the Party for that reason. But this pressure was constantly increasing up to the year 1936. Then came the Four Year Plan, which was a form of compulsion on the individual businessman and in the year 1939 came the war legislation with all its consequences. I am sure I need not explain all these consequences in detail.

Q Mr. Kastl, if a businessman, that includes these gentlemen here, wanted to attempt by way of secret and discreet sabotage, to invalidate the measures of the government, could you, in general, according to your experience, expect moral support and the discretion of his employees?

MR. SPRECHER: Mr. President, this is pretty speculative. As I understand the question it is if someone had tried something wouldn't the employees then have done something. Now, if the witness has some experience along that line particularly with respect to these defendants, where something actually happened then I think we would be somewhere away from speculation.

THE PRESIDENT: Well, it is always dangerous to attach too much significance or importance to the consideration of what might have happened with regard to something that did not happen. I think that is, perhaps, a little too much up in the air and speculative, Dr. Dix. We will sustain the objection to that. If you can show anything concrete that would be helpful to the Tribunal we will be glad to hear it, but that is highly speculative unless the witness is in a position to tell us from a factual standpoint of what did occur in a particular instance or more.

BY DR. DIX:

Q Are you able, witness, on the basis of one incident or several incidents, to answer my question? Before you answer may I say one thing. I believe I recall that Judge Morris, when he was speaking about the nature of expert testimony yesterday, said that an expert can give his opinion on the basis of hypothesis, but I merely wanted to say that for my justification.

A I need not set up no hypothesis to answer this question. I know that from my own experience. In every German enterprise, not only in industry but also in other enterprises, some employees were in the service of the SD. The SD collaborated very closely with the Gestapo and every day these people reported the internal affairs of the enterprises and especially what was being done by the important men. As a member of the Vorstand of the Bayerische Vereinsbank in Munich, which position I held for nine months, I noticed this. I was removed from this position by the National Socialist Party. But while I was there I noticed that whatever I ordered internally in the enterprise was reported daily and I was called to account and I called the two men responsible for this to account and I said to them -- "I don't care, you can be members of the SD if you want to, but I think it means of you to let yourself be paid by us for doing this, and it was the same everywhere. If a person is not incriminated today and says, how could they obey, that is very easy

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to say. Those who remained unincriminated were often fortunate enough not to be important people in any enterprise. Leading men in any enterprise were not free. One must have experienced all this in order to be able to judge it. For a person who has not experienced it, it is impossible to understand, especially for a person who has not even been in Germany.

THE PRESIDENT: Dr. Dix, we will give you a couple of minutes extra. We are about to rise for our morning recess and I hope that you can use it to organize your evidence and perhaps save time in the long run. We will now rise for our morning recess.

(AFTER RECESS)

THE MARSHAL: The Tribunal is again in session.

DIRECT EXAMINATION (continued)

DR. LUDWIG KASTL

BY DR. RUDOLF DIX:

Q. Geheirat, had you finished answering my last question, or do you want to add something to your answer?

A. I should like to add something, if I may.

Q. Please do so.

A. For the struggle in the consciences of all employers, and all leaders of enterprises as to whether or not they should adhere to the instructions and orders of the National Socialism Government, it was also decisive that the large masses of the population were thinking and what the foreign countries were thinking.

MR. SPRECHER: Just a minute, Mr. President. There was no question. If there was a question before the recess I do not recall it at this time, and the witness is now starting to go into conflict of consciences. If that is responsive to a question I would like to know the question.

THE PRESIDENT: My own recollection is that the witness was asked in substance, a question which related to the freedom of action of the defendants in particular, and industrial leaders in general, and this answer might relate to that, and within reasonable limitations we will treat it as continuing the testimony that he gave before the recess. The witness may proceed.

DR. DIX: Your Honors,---

THE PRESIDENT: Let the witness answer. We have ruled in your favor, Doctor, and there is no use arguing something that is favorable to you.

DR. DIX: Yes certainly, Mr. President. Then I shall merely make a remark later for rectification.

Please answer in the sense in which you had started out, even if that was not my question.

A. For the decision of an industrialist as to whether he should comply

with the orders of the Nazis, certainly psychological moments were also important. If the employer saw that the foreign embassies and delegations had intimate social contact with the Reich Government, if he saw that the delegations were present at every Party rally in Nurnberg, and when he saw that agreements and contracts were concluded with these governments, the enumeration of which would lead us too far astray, then it was very difficult for these people to say, "It is true that those people may be in agreement, but I should not". That was impossible for him.

All parades and armaments were shown to the foreign representatives, to the Military Attaches. Nobody contradicted these measures from the foreign countries. One time I very much agreed with a statement of a friend of mine. He said:

"A little ultimatum would have sufficed to do away with all this" but nothing happened.

The people who guaranteed European security on the basis of the Versailles Treaty behaved like sleeping guards in the building of European security.

I do not mean the United States when I say this.

DR. DIX: I shall not rectify what I had intended to ask, it is of no importance.

Q. Mr. Kastl, what was the position of these gentlemen with regard to the Jewish question?

A. You are referring to the defendants?

Q. Yes.

A. So far as I knew the defendants from personal contact, they were all opponents of the policy of the National Socialism Government which inflicted against the rights of the Jews, persecuted them, which forced them to emigrate and which sent them to concentration camps.

DR. DIX: I shall now turn to the chapter of contributions to the Nazi Party and to their affiliated organizations, and I should like to ask you, among these contributions to the party and its affiliated organizations, were the Nazis who contributed the only people, or were there also other people who just believed in the Nazi ideology who contributed?

A. When making contributions to the Party, the National Socialist ideology or party ideology played a subordinate part. There were various motives for making such contributions. Payments, for instance, to secure for oneself peace and quiet. If I were to so state it in this way, they were insurance premiums.

The Party was very corrupt in this respect. They took money whenever they could, foreigners as well who had enterprises in Germany were very much in favor of contributing to the Nazi party to protect their enterprises. Even Jews contributed in order to get security, peace and quiet for themselves, in order to facilitate their emigration, and so on.

From my practice as a lawyer in Berlin, I know this particularly well, since for more than 75 per cent of my clients, I had persons who were persecuted by the measures and laws of the Nazis.

Q. Mr. Kastl, how did my client, Mr. Schmitz, think about the question and the duty of international collaboration of economy?

A. Mr. Schmitz was the strongest promoter for International cooperation. To the greatest extent he participated in international conferences. He concluded agreements not only for the special regards of his own firm, but beyond that, he participated and interested himself in all questions of international cooperation. Nothing was of greater interest to him than international cooperation.

Also in the financial field, that was a field in which he made particular efforts.

Q. Did he not himself participate in the World Economy Congress, the large Interallied World Economy Congress?

A. Since I am under oath I cannot definitely say that he participated in this Congress, but I assume that he did.

Q. Mr. Kastl do you know anything about Mr. Schmitz' relations to the former Reich Chancellor Bruening?

A. Yes.

Q. What were these relations?

A. In order to get a gradual and stronger independence from Parliament, - which was necessary and appropriate for him in view of the circumstances prevailing at the time, - Mr. Bruening created for himself a small circle of advisers, amongst them advisers also Mr. Schmitz belonged. I was also a member. I met Mr. Schmitz with Mr. Bruening, but very frequently Mr. Bruening consulted these people individually, not as a Board.

Q. You answered my question for the cooperation of Mr. Schmitz in international cooperation. If I now extend this question to cover the other members of Farben would you then be able to give me an answer?

A. I cannot tell you that in regard to individuals. I can only do that so far as I know them from personal contact. I can answer it, however, since the policy and tendency of Farben is known to me, because of my activities, and there I can say that they did very strongly work for international cooperation. That remained so, and remained true after '33.

Q. Mr. President, I am now reaching my last question, and as a going-away present I ask you that you permit me that this question for international relations, be expanded to include the Reich Association of German Industry as such.

I know that Mr. Sprecher does not like this Reich Association, but I believe it would be helpful if the Tribunal would know something about the attitude of the entire industry.

THE PRESIDENT: Ask the question and we will undertake to try to pass on it.

BY DR. DIX:

Q. Geheimrat, all is well that ends well. What did the directorate of the Reich Association of German Industry think about the problem of international economic cooperation; how did this association act?

THE PRESIDENT: Just a moment. May we rely upon your observation that this is your last question, Doctor?

DR. DIX: Mr. President, I permitted myself to make this rather proud observation, that I am in the habit of keeping my promises, and I shall do so in this case. Even if the answer of the witness, which I do not know, should be strong temptation for me to put another question, I shall nevertheless resist this temptation.

THE PRESIDENT: May I say in answer, that certainly we know you do keep your promises. We do not distrust you. I just wanted to make sure that I understood you.

Mr. Witness, you may answer the question.

A. The Reich Association of German Industry, always, that is, up to the year of 1933,--because after 1933 it disappeared,--always furthered international cooperation. Every year we held a meeting of all European industrial organizations in a certain capital of Europe. We had a main committee which conducted the business of this association. In Berlin, we had a representative of the Federation which was also accredited with us, just like an ambassador. In London we had a similar organization. We worked together with the National Industrial Conference Board in New York, etc.

Q. You have finished?

A. Yes.

DR. DIX: Mr. President, I do not have to say any more. I do not have to say as usual that I have no further questions because I have already stated that.

THE PRESIDENT: I hope, Dr. Dix, that you have not arranged a conspiracy with any of your associates to take over and invade the field which we have forbidden you to go into. Thank you very much.

That remark was made facetiously.

DR. DIX: Mr. President, I have a facetious reply. I am not an expert lawyer for conspiracy.

THE PRESIDENT: Very well.

Is there any further interrogation of this witness on behalf of Defense Counsel?

DIRECT-EXAMINATION

DR. PELCKMANN, (Counsel for the defendant Von Knieriem):

Q. Geheimrat, you have already stated that you are a lawyer, a legal expert and a lawyer. However, I do not want to ask you as a lawyer, but as the person who held a leading position in economy, and in representing economy, and therefore must have an extensive insight into questions of business management in heavy industry.

May I ask you first of all whether you have already rendered expert opinions for courts, government authorities and private persons before?

A. Yes.

Q. Especially in and around the time of 1933, did you also render such opinions for people who were known as opponents of the Nazis?

A. Yes.

Q. My question, which sounds very simple at first, is the following?

A. In what manner, and to what extent does a Vorstand member of a large enterprise learn about business incidents within the enterprise?

THE PRESIDENT: Counsel, just a moment, please. We will remember that we permitted an inquiry into that field yesterday, but I should like to address this question to you. Would it not be possible to give us, sometime during the course of the trial, a brief statement as to the domestic law, the German law, that controlled at the time that is under inquiry, that would afford an answer to these questions; something that you could work out among yourselves, as counsel in this case, and submit to the Prosecution for criticism.

It seems to me that it might be much more practicable to have a statement prepared as to the controlling law of Germany at the time that could be made an exhibit here, that could be submitted to counsel on the other side and perhaps an agreement reached.

If not, then at some later time, go into this field of the law of Germany as it applied to corporations generally, or this corporation in particular. I suggest that in the interest of time, and in the interest of clarity, I believe the Tribunal would be able to grasp the subject better if we had something along that line rather than to get the facts from witnesses.

I would be glad to have your views and the views of any of your associates who wish to speak on it, as well as the Prosecution, as to the practicability of this suggestion.

DR. PELCKMANN: Mr. President, first of all, it is intended to clarify legal questions and to explain to you the commentaries of civil law with which we are concerned here. Beyond that it is possible to render a legal, expert opinion about this question, as far as it applies to civil law. I intended, when asking this question, merely, as I said in introducing my remarks, not to obtain from him a legal, expert opinion or an enumeration of laws, but merely a description of circumstances in industry in general--now it was customary to deal with special, concrete questions of business management. I believe that, apart from legal questions, this particular question would be an additional aid for the Tribunal.

THE PRESIDENT: I did not wish to intimate, and do not, that your question was improper or that the evidence would be improper. I think quite the contrary. I only made the suggestion in the interest of time and clarity. If we could have a statement--a brief or whatever you may wish to call it--from which we could reach the conclusions as to what the German law was, at the time, upon which the Prosecution might agree, and then, if there was no agreement, hear evidence of experts. I think it would be more helpful to the Tribunal than to try to extract it from the testimony of the most competent witnesses, and certainly the Tribunal is not reflecting as to the ability or the capacity of this witness. I just offer that as a suggestion in the interest of an orderly procedure and as something that would be more helpful to the Tribunal.

DR. PELCKMANN: I thank you very much, Mr. President, and, as I have already said, we intend to do what you have intimated, Mr. President. The question arises merely whether these things might not become more tangible from a practical point of view if a witness from industry could answer this question quite briefly, in response to 5 or 6 questions.

MR. SPRECHER: Mr. President, we're really not in a position to suggest techniques at this stage, but, still, I was wondering if

any consideration had been given to the Defense to having a witness like Geheimrat Kastl state his experience, concerning this practice, in an affidavit, which could be laid before us, and thereafter, after we become advised, we could come back and have further direct-examination concerning any points on which there was any lack of clarity, and indeed there would be some cross-examination.

DR. PELCKMANN: I believe that the principle of the best evidence possible should be followed. If, as I hope, I shall be able to elucidate the best evidence and to clarify this problem by very few questions, then, on my own, and also in agreement with my colleagues who gave me the mission to treat this problem for all, I shall like to ask the question here now from the witness. At the moment I do not believe that there are any special reasons why we should deviate from the principle of best evidence for substantive questions. I only ask about matters of fact; I do not speculate in any way.

THE PRESIDENT: My only thought was, counsel, that in dealing with questions of law the Tribunal would be in a better position to reach a conclusion if we had it before us in writing. I'll not suggest that your question is improper and that we're going to place any undue limitations on you, and you may use your own judgment about it.

Now, it is ten minutes before recess time; go ahead in your own way and make your showing, and in the meantime, at your leisure, you may take up the matter with your associates, and if you conclude, as I am inclined to believe, that you would be helping us more concretely by giving us a brief of law, either in affidavit form, or something which counsel of Defense and Prosecution can agree upon, you may do it. In the meantime, use your own judgment and do not be influenced by what I have said, it was merely meant as a helpful suggestion.

DR. PELCKMANN: I shall discuss this with my colleagues.

THE PRESIDENT: I think, counsel, that perhaps you did not understand me correctly. I meant to say that in the meantime go on

with your interrogation without prejudice whatever to the suggestion that we made. Feel free to go ahead and conduct your inquiry as you had planned, and then, after recess, you can conclude whether you wish to continue along that line or undertake to work out something as I have suggested.

DR. PELCKMANN: Thank you, Mr. President.

BY DR. PELCKMANN:

Q Herr Geheimrat, my question was, in what manner and to what extent does a Vorstand member generally learn, in a large corporation, about incidents of the business within his corporation.

A That depends on the size of the Vorstand, the local extension of the corporation, the official residence of the various members of the Vorstand, the distribution of production, etc. You asked me certainly in regard to Farben. If I imagine Farben now, with all its Vorstand members in Berlin, in Frankfurt, in Leverkusen, in Ludwigshafen, in Bitterfeld, in Leuna, etc., how is there a possibility for the individual members of the Vorstand to be given information, to be minutely informed about the incidents in the department of the other members of the Vorstand? It is impossible that all these questions be treated in the course of one meeting of the Vorstand. If this were to be done in such a large corporation, then the Vorstand would be convening permanently, and a corporation cannot be directed by Vorstand meetings alone—only by productive work. At the present time I am in charge of the Commercial Management of the M.A.N.—Nuernberg, we have three plants—in Nuernberg, Augsburg, and Gustavsburg—but I do not know in detail what the chief in Gustavsburg or in Augsburg, who are both members of the Vorstand, are at the present undertaking. That is impossible to know. It is true that we are a large corporation, but compared to Farben we are only a small one.

Q You already spoke about the variegated production, when you answered my question generally. Would you also exemplify this in regard to Farben?

A In my experience Farben produced nitrogen, Buna, artificial and synthetic materials, oils, lubricants, and various other products which, as such, were only connected with each other because they were chemicals and not because of any other reason. It is quite clear that such a widely diversified production demands quite various functions from the members of the Vorstand, and, also, it is clear that the individual members do not know any details about departments of another Vorstand member.

Q Think about Vorstand meetings. During those meetings lectures are given by the individual competent Vorstand member about a question in his department; the question is discussed. Can you tell me in what manner this was done in the Vorstand, in your experience that is?

A I don't believe that speeches or lectures were given in the Vorstand meetings. The members merely made their motions, threw them open to discussion, discussed them, then they reported about changes and improvements in production and about financial developments and other developments of that branch which they have to direct. Nothing else. Personnel questions were discussed in the Vorstand if they had to be dealt with according to corporate law.

Q Let us assume Herr Geheimrat, that a specialist on a special technique, he need not belong to Farben, let's say a specialist on the Buna process deals with a question. Is it possible then for another member of the Vorstand, in your opinion, to deal with the preliminary questions which arise from this question and to judge them?

A It is very difficult to answer this question. I could say "Yes" and "No." It is very hard to judge. It depends upon the knowledge of the individual and upon the interest of the individual.

Q When dealing with such questions are details given by the competent Vorstand member?

A Only if they refer to important matters.

Q Assume that a special fact or question has been raised during the discussion by the Vorstand member concerned. Is it unusual, in your

experience, that other members of the Vorstand should, nevertheless, not be informed about this state of affairs or that they do not remember about this?

A No.

Q It is not unusual?

A No, it is not unusual. The prerequisite for this is, of course, that the corporation be very large and ramified.

Q Is it customary for one Vorstand member to supervise another Vorstand member?

A I never heard that. That is impossible.

Q Why is that impossible?

A Because that would be most unfriendly to his colleagues and quite contrary to custom.

Q Can you imagine circumstances under which a certain Vorstand member should have to concern himself with the department of another Vorstand member, in an exceptional case?

A If there is any distrust or suspicion about a certain member of the Vorstand, which would cause the Aufsichtsrat or Verwaltungsrat to order that this particular member of the Vorstand be kept under surveillance, then they would not choose another Vorstand member for this task, but they would undertake this task themselves.

Q Thank you very much. This is enough, Mr. President; with the reservation that I shall discuss that with my colleagues, I believe that I can conclude my interrogation. I might have to ask you for permission to continue it later.

THE PRESIDENT: I figure I owe it to you, counsel, to say that I think I misconceived the purpose of your examination. I assumed that you were going into the field of German law as it applied at different times and as it controlled the operation of industry, and the boards, and the committees of industry. That is not true, and certainly you were within your rights in insisting upon the privilege of interrogating this witness along the line that you have. However, if it is your

purpose, or the purpose of your associates, to make some further showing than what was made yesterday, with respect to the domestic law of your country as it was at the time under inquiry, our suggestion does stand, that we think it may be more helpful if we could have it in affidavit form, or in some agreed statement, if that can be worked out.

Counsel, we're about to recess for lunch. May I say that at the morning recess the Tribunal was in conference with a committee of counsel for the Defense in regard to a matter that was not concluded and is of some importance. Under the circumstances we should like to have the committee return to our chambers at 1:30, or shortly thereafter, in order that we may resume that conference; and the Tribunal, in the meantime, will be in recess until 2 o'clock instead of 1:30 today.

The Tribunal will now rise.

(The Tribunal recessed at 1220 to resume session at 1400).

(AFTER RECESS)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Tribunal has just concluded a very helpful conference with representatives of counsel for the defendants. I am quite sure that the time was well spent.

The Defense may proceed.

DIRECT EXAMINATION (Continued)

DR. LUDWIG AACH

BY DR. HOFFMANN: (Counsel for the defendant von der Heyde)

Q. Witness, if during the years after 1933, you would have told to anyone, who cared to listen, that Hitler was not the right person for Germany -- did you do that -- would you have done that?

A. I did that, but I was careful about whom I said it to. One could not say that to everybody. The danger was much too great -- the danger of its being reported, and then one immediately was in a concentration camp, or in prison.

Q. Witness, was the question of who could denounce you, confined to certain persons, for instance, a member of the SD or the SS, or did you have to distrust everyone?

A. One had to be careful with everyone.

Q. Then, witness, whether someone reported you or not, depended upon the character of the person making the report?

A. Of course.

Q. Witness, did you know anything about the fact that beginning with 1941, gasings took place in Auschwitz?

A. No.

Q. How do you explain that?

A. Well, I intended, at least, that I lived with eyes and ears open during that period of time, but in spite of that I never knew what was going on in the concentration camps. I did not even

know where the concentration camps were, with the exception of Dachau, or Oranienburg and Theresienstadt. Those were the only ones. Later I heard of Buchenwald. I know nothing whatever about Auschwitz. I learned of that only after the collapse.

DR. BUEFFELMANN: I have no further questions.

DIRECT EXAMINATION

OF DR. A. STL

THE PRESIDENT: Dr. Siemers.

BY DR. SIEMERS: (Counsel for the defendant von Schnitzler)

Q. Geheimrat Kestl, during your examination you said before that you knew Dr. von Schnitzler personally?

A. Yes.

Q. Where did you meet Dr. von Schnitzler?

A. I saw Dr. von Schnitzler repeatedly in Berlin and in other places too. I was at the International Exhibition in Barcelona with him. Dr. von Schnitzler, as far as I know, was some sort of Reich-Commissar for this Exhibition.

Q. You said that you were in Barcelona with him?

A. Yes.

Q. Do you remember how long this Exhibition lasted, and when it took place?

A. I believe 1930. I am not sure, about 1930, or perhaps 1929, I am not certain.

Q. You are correct. It began in May 1929, and lasted until January 1930. You said that Dr. von Schnitzler was a Commissar; was it Reichs Commissioner?

A. Yes.

Q. By the way, it should be a Commissar General. Was there a Commissar General from every country?

A. Yes, so far as I know.

Q. Do you remember who appointed Dr. von Schnitzler as

Commissar General?

A. The Reich Government in office at the time.

Q. Who was that?

A. Well, 1929, the Foreign Minister was Stresemann, and the Prime Minister was, I believe, Mueller, the Social Democrat, Mueller.

Q. Since you know Dr. von Schnitzler personally, may I ask you to say a few words about the personality and the character of Dr. von Schnitzler and also about his attitude towards the foreign countries and towards National Socialism?

A. So far as Dr. von Schnitzler's attitude toward foreign countries, and as a human being is concerned, I cannot testify. I never talked to him about National Socialism, at least, as far as I can recall. Dr. von Schnitzler is a very kind and pleasant person, perhaps too conciliatory and too kind. Perhaps that is a minor fault, but at least he was extremely polite to all foreigners, and he had great understanding for foreign countries and considered it very important to be on the best terms with foreign countries.

Q. Dr. von Schnitzler has been repeatedly characterized by the Prosecution as an energetic person who exerted pressure with ruthless measures upon foreigners. Do you consider that possible, having known Dr. von Schnitzler as you do?

MR. SPEECHER: I have the usual objection to the introduction of counsel to this type of question, and I would like to have it understood that that type of description by counsel to a witness in the stand, before a question is asked, will be objected to, and that it is really not permissible, and I think we could get along without any objections along that line.

THE PRESIDENT: The objection is well taken, and the counsel should not preface a question with suggestive and leading observations of that kind. Just ask the question, Dr. Siemers, which

you are concerned about, without your own observations.

The objection is sustained.

DR. SIEBES: I beg your pardon, your Honors, I merely put it because the witness did not know the Prosecution's point of view, and I thought I could put that to him.

THE PRESIDENT: Well, the Prosecution's point of view is a matter of record and you might enter into controversy if you undertook to state the Prosecution's point of view, so just leave that out and go along.

BY DR. SIEBES:

Q. Did you meet Dr. von Schnitzler occasionally during later years?

A. Very rarely.

Q. You don't remember any particular visit?

A. That was because I had entirely different work, which did not bring us together any more.

DR. SIEBES: Thank you. I have no further questions.

THE PRESIDENT: Any further questions from Counsel for the Defense of the witness on the stand?

None being requested, the Prosecution may cross-examine.

CROSS-EXAMINATION

DR. LUDWIG MUTH.

BY MR. SPRACHER:

Q. Geheimrat, I want to ask you a few questions about your qualifications, and your personal history, and I want to tie down a number of things according to dates, according to time. You have already said that your present position is -- what?

A. At this time I am an attorney, but I am practicing only to a limited extent, because as a delegate of the Aufsichtsrat I am in charge of the Commercial Office of the MAN, that is the Maschinenfabrik Augsburg-Munich. I have been doing that for more than two years.

Q. And your position is as an Aufsichtsrat member at the present time; is that right?

A. My Aufsichtsrat mandate rests as long as I am in charge of Vorstand business. That is according to the provisions of German corporation law. I am a member of the Aufsichtsrat, but I am not active as such. One cannot do both at once.

Q. You are delegated to supervise, then, the Vorstand, with the approval of the Allied authorities; is that right?

A. The Allied authorities have had nothing to do with my appointment. It was a matter of the Vorstand and the Aufsichtsrat.

Q. Now what was your last position before the German collapse in 1945?

A. I was merely a lawyer, and a member of the Aufsichtsrat of various enterprises.

Q. Approximately how many?

A. Seven or eight, perhaps nine. There might have been nine.

Q. Were you in the Vorstand of any company between 1933 and 1945?

A. No.

Q. Now, you mentioned that you were removed from a certain company in the Bawarian Bank I believe; what company was that, and what position did you hold in that bank, and what year were you removed?

A. I was removed at the end of 1937, and I was chairman of the Vorstand of Bayerische Vereinsbank in Munich. I held this position for only about one year. Immediately after the beginning of my work there the intrigue began by the party against me. Negotiations about my removal went on until the beginning of 1938, and then I became again a lawyer in Munich.

Q. Now what was your position in the Reichsverband in April 1923, when you resigned?

A. When I was removed from the Reich Association, on the first of April I was managing presiding member. That means, - for those who are not exactly informed about the structure of such an association, - the person who actually manages the Association.

Q. Did you resign or were you removed?

A. I was removed.

Q. I happen to know about this incident. I wonder if you would tell the Court the exact circumstances as to why you were removed and very briefly, please?

THE PRESIDENT: Mr. Prosecutor, is that a matter that you think affects the credibility of the witness, or are we getting into a collateral issue now?

MR. SPEECHER: I think it, - and I hope the witness understands this, -- I think it affects the weight that should be given to his testimony, and I also, think, frankly, it affects among other things, his knowledge concerning some of these later events to which he has testified, and moreover, --

THE PRESIDENT: Very well.

MR. SPEECHER: And moreover the defense raises the question as to his showing resistance, and also a conspiracy, and I think I have the right to go into that a little bit, at any rate.

THE PRESIDENT: Very well.

MR. STETTER:

Perhaps I may ask a question.

Q. As I recall from a conversation I once had with you, Chairman, you refused to fly the Swastika above the building in which the headquarters of the Reich Association were located. Is that correct?

A. There was only one Reich association at the time. When I

refused to fly the Swastika flag over the building of the Reich Association of German Industry, that was on the date of Potsdam, at the end of March, 1933. At that time the Swastika flag was not yet the official Reich flag and we did not even own a Swastika flag, and I refused to fly any flag because I considered the Day of Potsdam an absolutely wrong action, and I had the approval of the then President of the Reich Association, Dr. Krug von Nolln und Halbach, who agreed with me entirely, and also refused to fly the flag. Then twenty SA men came to see me with an officer, and forcibly raised the flag.

Q. Was that incident related to your removal from your position?

A. My removal occurred a few days later.

Three gentlemen came to see me and said that I had no connection with the Reichs Government; I had an entirely wrong economic attitude; that I was against National Socialism, and I had permitted in the Praesidium of the Reich Association, and in the management of the Reich Association, that Jews remain there. I admitted the latter fact, and I said that I saw no reason for any criticism of the Reich Association in that, and that I saw no reason, if I disagreed in economic political matters, to remove me. I asked on whose behalf these gentlemen came, and I was told that they came on behalf of the "Movement". That is what it was called at that time. That was onehalf Party and yet not Party. There was a revolution going on, and the revolution lasted for several weeks, and in this time, such revolutionary actions were undertaken.

Q. Now at that time you were not a licensed lawyer, but you studied over the next year and finally were admitted to the Bar in 1934; is that correct?

A. Yes.

Q. And thereafter you held a number of positions on Aufsichtsrat, and also held a private legal practice from then until 1945; is that correct?

A. Yes, with one interruption, when I was working for the Bayrische Vereinsbank.

Q. Now your own personal history leads me to ask you certain questions, between certain questions concerning what you mean by certain words you used during your direct examination. You mentioned that "resistance" of no kind was tolerated, by the Party. Did you distinguish between, in the first place, open aculation and praise of the party, and retirement from active business affairs? Do you make that distinction, or do you not?

A. Oh, of course, it is possible to withdraw from business life; it is possible to admire the Party publicly, and it is possible to resist secretly. I would like to give that as a first possibility, while staying in one group.

The possibility of secret opposition was almost impossible. I believe I explained that this morning. The possibility of open resistance was quite impossible, especially after the introduction of the Four-Year Plan, and even more so after the beginning of the war.

Q. Well, so that a man adhered to these terms, would you describe your own activity as one of at least passive resistance, in view of the fact that you retired from the public position you held in the early part of 1933, when the first actions were taken towards the forcible assimilation or Gleichschaltung of the industrial organizations, including the Reichsverband?

A. The Reichsverband already existed in 1933. It was not created at that time and I did not withdraw completely either; I had quite an extensive legal practice. In this practice it was necessary for me to negotiate with many government agencies for my clients, and my clients, - please excuse me if I emphasize that here, I don't like to do it, - but in the sense of that time, my clients were known as "dangerous clients". They were people who had suffered under the

National Socialism regime, and when I was protecting, and trying to preserve their interests.

There were Jews, and non-Jews. When I was on the Aufsichtsrat, and Department Chairman of the Aufsichtsrat of Industrial Enterprises.

If the Tribunal permits I should like to mention one case which happened here in Nurnberg. I was Deputy Chairman of an enterprise whose chairman, because of his negative attitude towards National Socialism, which was called, "sabotage" or resistance had been removed from all of his positions by the Nazis. I became this man's deputy, and did what was necessary in the face of a disobedient Vorstand. The Vorstand did the following. It was to conclude a contract which was something quite common under the German tax laws, and contracts were another enterprise, of which share was 100% participation. It refused to carry out this assignment of the Aufsichtsrat, and went to the Cancellery of the Fuehrer for protection. That was the political office next to the Reich Cancellery, and said that the Aufsichtsrat were people who wanted to betray or deceive the State; they said "we have an order from the Cancellery of the Fuehrer not to obey the orders of the Aufsichtsrat", but in spite of that we unanimously gave a vote of "no confidence" and dismissed him, and he refused to leave his office and with all the Aufsichtsrat, went to the client to remove him bodily, but he had already left the plant through the back door. Then I appointed a new Vorstand, and gave the corresponding instructions to the officers of the company. This was an act distinctly against the orders of the Fuehrer and it is a miracle that I was not sent to a concentration camp because of it.

I apologize that I had to tell this here. One does not like to talk about oneself, but the questions of the Prosecutor brought it up.

Q. Did you ever assume, after April, 1933, any further position in the Wirtschaftsgruppen, the Economic groups, or in the Sitzengruppe, the now top group which was called the Reichs Group of German Industry?

A. No, if I had I would not be here.

Q. You testified that you were in some kind of a pink or slightly red organization; what was your own party in 1932, Dehcmrat?

A. After 1933?

Q. No, before 1935.

A. Before 1933, I was not in any party. You see I was in the Colonies for 15 years. How could I have any connection with the German Parties?

Q Now, if you will take your mind back to the time of 1933, Schoimrat, and after you resigned, or after you were removed from the Reichsverband, can you give me a single example of any decision which was in the nature of a political directive for I.G. Farben, in which you know, certainly, that the Jewish members of the Aufsichtsrat of Farben personally participated? Any single example?

A I beg your pardon. I did not quite understand your question. What kind of an example do you mean?

Q You testified that the Verwaltungsrat of Farben decided on certain political directives of I.G. Farben. Now, the Verwaltungsrat, as we all agree here, was made up of a certain number of the Aufsichtsrat of Farben; and I asked you if you recalled any example after 1933 when the Jewish members of this Verwaltungsrat participated in any single political decision for I.G. Farben, even which was brought to your attention -- any one example, please?

A That is a very difficult question. I cannot remember well enough to testify under oath.

Q Can you tell us whether or not the Verwaltungsrat of Farben was at all active after 1933, and, if so give us an example where the Verwaltungsrat was active after 1933. As far as the Jewish members are concerned, until they either died or emigrated. One of the last ones of the Jewish or half-Jewish members to be removed from the Verwaltungsrat by order of the Party was, I believe, Mr. von Simson; I am not sure, but I believe that is who it was.

Q Did I understand you to say that the Verwaltungsrat was active after 1933?

A Yes, certainly.

Q Give us an example of how it was active, according to your knowledge -- any example. What did it do, and how do you happen to know about it?

A I cannot give any examples of the details of the work of the Verwaltungsrat. That is quite impossible.

Q Excuse me. I didn't ask you for any details; just give me one example of where they were active, please.

A I cannot give you an example with certainty. Perhaps I will think of one, but I am astonished about this question. I can't give you any answer to it on the spur of the moment, but the Verwaltungsrat did continue its activity. I know that from the talks with Mr. von Simson; I know that from discussions with the two Weinberg brothers, and also with Mr. Oppenheim.

Q Do you know anything of the actual political relationships of any of the defendants whom you talked about with Nazi leaders after 1933? Did any of them ever talk to you about those relationships?

A Well, after 1933 I frequently talked to Mr. Schmitz and Mr. von Knieriem about political questions, but I never got the impression, and I consider it quite impossible, that these two gentlemen, or any other members of the Vorstand, had any close connections with Nazi leaders.

Q Did you hear from them about any commendations they got from high Nazi leaders of the Third Reich? Did they tell you about any such commendations or not?

A No.

Q Did they tell you about any gifts they were giving to Goering or any other high Nazi leaders?

A No.

Q Did they tell you about any contributions, reaching more than one hundred thousand marks, which were given to the SS at any time?

A No.

Q I ask you these questions because you said, so far as you did talk to them after 1933 you still consider that they were opposing Nazism. Did you talk to them very much after 1933, with respect to their relationships to the Third Reich, to the Four-Year Plan, or to such things as the Four-Year Plan, or not?

A Yes, but the payments which a concern made to the ideologies of the Party. It was something else. I think I explained that this morning

quite clearly.

Q Well, I just asked you if you had heard about it. You hadn't heard about it?

A And then it was not customary to discuss such contributions, even with good friends.

Q Did you ever join the Party yourself?

A No.

Q Did you ever make any large monetary contributions to it yourself?

A No, aside from winter aid.

Q No further questions.

THE PRESIDENT: Any redirect-examination of the witness? Any redirect examination?

DR. R. DIX: Yes, redirect-examination.

REDIRECT EXAMINATION

BY DR. R. DIX:

Q When introducing one of his first questions, Mr. Sprecher said: "In your capacity of a delegate in the Aufsichtsrat you were compelled to supervise the Vorstand. Is that right?"

Answer: "Yes."

And then his question: "You did not say anything to this introductory remark, Mr. Kastl."

Please defend your attitude about this assumed compulsion of supervising authority of the Vorstand, and say what you have to say about it.

A Neither according to corporation law nor according to any other regulations is the member of the Aufsichtsrat, who is delegated to the Vorstand, in a position of supervising the Vorstand. This Aufsichtsrat member carries out the efforts in the same way as other members of the Vorstand. He is not there to supervise the efforts. In the M.A.N. I have been, for more than two years, filling a gap left by a Commercial Vorstand member who once existed and who is not there and has not returned, and there is no possibility of finding a suitable substitute.

Q For the reason for his question, Mr. Sprecher, after he was asked by the President, said that he was putting this question to you to find out from you upon what you were basing your knowledge in industrial and political-economic measures after 1933. That is to say, after your removal, or after your dismissal from the Reich Association. I ask you now to answer this motive for the question — that is to say, to answer the question, "Upon what do you base your knowledge for political and economic-political events after 1933 when you left the Reich Association?"

A If one has belonged to such an association as the Reich Association of German Industry and has been in charge of it for eight years, and then is suddenly removed one day, he does not simply close the door and withdraw into a glass cage or into a Paradise, but he is still in contact with the people with whom he has been working. He is connected with finance and commerce, especially foreign trade with industrial enterprises. In other words, my clients included industrialists. Because of my personal qualifications, I was elected to the Aufsichtsrat of some industrial enterprises. As managing Praesidium member of the Reich Association I was not allowed to belong to any Aufsichtsrat; so it was a matter of course that I remained in contact with the economic life of Germany and did not close my eyes and ears completely.

Q One last question: In starting one of his questions, Mr. Sprecher remarked to you: "You, Mr. Keatl, said in your direct-examination this morning that you had been tainted a pink color politically."

I ask you what you actually did say.

MR. SPRECHER: Mr. President, —

THE PRESIDENT: Just a moment. What the witness said is a matter of record, and I think the members of the Tribunal remember it. He said, in passing, something about some groups with which he frequently had breakfast. I hardly think the subject-matter about which you're inquiring rises to the dignity of a matter that needs to be gone into further, counsel. I think I can assure you that it's not very important here,

and I think our time is worth more than the question and answer that would go further into that.

MR. R. DIX: I shall withdraw my question, and I ask that the Tribunal merely look at the record, which is actually different. I have further questions to this expert witness.

I am just informed by my colleague, Silcher, and I thank him very much, that the witness mentioned the day of Potsdam in his cross-examination.

I should like to ask him when the day of Potsdam took place — merely the date.

Q. And the significance of that day, what does it mean? The political tendency of that day?

A. The political tendency of the day was the reconciliation of all other authorities, welcome all other authorities to the new Government under Hitler.

Q. Was the Corps of diplomats present during that meeting?

A. I don't know, but I assume it was.

REDIRECT EXAMINATION

QUESTIONS BY DR. HOFFMANN: (for the defendant Von Der Hyde):

Mr. President, I have only one question.

Q. Mr. Dix, you spoke about the type of resistance that could be offered to the Government as it seemed possible to you. I should like to ask you whether you know anything about the fact that industry, generally speaking, at some time or other, did not quite dislike and even sometimes supported or caused their own employees or people who were in these feared organizations as SS or SD so that they might be informed or protected against attacks coming from those agencies?

A. Yes, that developed gradually. If the party had its spies in the Konzerns then the Konzerns for their own protection had to do something similar and that was done.

DR. HOFFMANN: Thank you very much. No further questions.

THE PRESIDENT: Anything further, gentlemen? Then the witness is excused and the Marshal will escort him from the box.

Now, Gentlemen of the Defense, the Tribunal is about ready to recess unless on a survey you have made since our informal conference there is anything else you are in position to present at this time.

Then, in accordance with the understanding that was had informally in chambers, Tribunal is about to recess until next Monday morning at nine-thirty.

The Tribunal is in recess.

(The Tribunal recessed at 1606 hours until Monday 26 January, 1948, 0930 hours.)

Official Transcript of Military Tribunal VI in the Matter of
the United States of America against Carl Krauch, et al,
sitting at Nurnberg, Germany, on 26 January, 1948, 0930,
Justice Curtis G. Shaker, presiding.

THE CHIEF: The Honorable, the Judges of Military Tribunal IV.
God save the United States of America and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: You may report, Mr. Marshal.

THE COURT: May it please your Honor, the defendants Haulfiger and Schneider are absent from the Court Room.

THE PRESIDENT: Very well. They have been excused for the day.

DR. HOLT (Defense Counsel for Defendant Hoorlein): Mr. President, I ask for approval for the defendant Professor Hoorlein to remain away from the sessions today beginning at 11:00 o'clock. We have some important matters in connection with our case, which begins tomorrow or the next day, to discuss and we need this time.

THE PRESIDENT: Very well. The defendant Hearnin will be
crossed.

The Tribunal wishes to make its position clear. We do not think that defendants generally should absent themselves from the trial, but we do see the very best reasons, in view of the calendar that has been set up, for requests being made for temporary absence of defendants in the preparation of their case. This request of Dr. Helta is entirely proper and will be granted and similar requests will be made, but please do not construe that as any disposition on the part of the Court to dispense with the personal attendance of defendants unnecessarily.

Dr. Slaughter, did you hear Mr. King?

DR. MEYERS (Defense Counsel for the defendant von Schnitzler):
Your Honor, Dr. Dix was actually supposed to begin with the presentation
of document books for Generalist Schmitt. I wanted to make a request
first there be a slight change therein, if possible; that I
begin with two witnesses affecting Count 1 of the Indictment, Aggressive
War, and that, after that, Dr. Dix, who has been friendly enough to

agree to this suggestion, present his documents. I make the request because Dr. Oberhoff is urgently needed in Frankfurt tomorrow morning at a conference and because Dr. Schlotterer, the second witness, is urgently needed by an American agency outside of Hamburg.

THE PRESIDENT: The Tribunal will be very glad to grant that request and it is granted.

In that connection, let me say this, that in view of the rather close schedule that has been set up by defense counsel with reference to the calendar - by that I mean the days upon which they will conclude the presentation of their evidence as they can best estimate it - we think there should be some little leeway in this regard; that the one who appears second on the list ought really to be prepared to go forward at the time fixed for the one just before him on the list. I trust you understand what I mean - that you be ready a little ahead of time with respect to your books and witnesses so that if things do occur - the absence or unavailability of a witness or some temporary breakdown in the distribution of books, some error in distribution that they haven't reached counsel for the prosecution in time - that we may not be delayed because of these small circumstances that, in a trial of this magnitude, may have been anticipated. We'll appreciate it if you will do that. This request this morning is a good example of what we have in mind and we appreciate the fact that counsel have arranged to go along without any delay because of these circumstances.

DR. SIMERS: Thank you, Dr. President.

DR. SPRENGER: Dr. President, in this case, Dr. Simers was very thoughtful and kind enough to suggest to the prosecution some time in advance, I believe Saturday morning, that he would make this request and, of course, I was in agreement with him. There's just one point, if I may bring it up at this time, in this connection. Where, for instance, on a Monday morning there is to be a change in the schedule, if the notices for the witnesses, such as the one for Schnitzler, is;

merely served at noon on Saturday or Saturday morning with the Secretary General, the prosecution actually receives no actual notice of that ordinarily until Monday morning, and I am, therefore, very grateful to Mr. Simons that he gave me this information by an informal memorandum and I only point out, Mr. President, that sometimes I would have to object to such a procedure if we had not had informal notice.

THE PRESIDENT: Very well. We'll anticipate that those matters can be arranged in such time that the prosecution can be advised as it is entitled to be advised.

Now, on behalf of the Tribunal, I should like to make a couple of observations. We still have 17 potential affiants to be cross examined. Among these are two in Austria - Johann and Rottenberg - and I should like also to speak of one in the American Zone of Germany - Brugowsky. The Tribunal is of the opinion that the cross examination of these three witnesses can best be conducted where they are, without any further effort to bring them to this court room. Under the circumstances, we have this day instructed the Commissioner, Mr. Mulroy, to proceed with arrangements to conduct the cross examination of the two in Austria at Vienna, and to Brugowsky at the prison where he is confined. We have asked him to contact the counsel for the defense who are primarily interested in that matter so as to arrange a time that will least interfere with the conduct of the trial proper. You may expect to hear from him in that regard and proper arrangements will be made for travel orders and accommodations for a reasonable representation on behalf of the prosecution and the defense, as well as to have proper interpreters and reporters as are necessary to take these cross examinations. In view of the circumstances, we have suggested that perhaps it might be wise to have Brugowsky cross examined before the two witnesses in Vienna. I mention that latter so that if there is any delay in Mr. Mulroy reaching counsel, that you feel free to take the matter up with him informally. He will be expecting to hear from you

in that connection. You should try to arrange that so as to inconvenience as little as possible counsel who are interested in the proceedings here in the Court Room with respect to time.

Now, counsel are all familiar with the schedule that has been tentatively set up that will prevail in the presentation of the case of the defense. It may be that some administrative problems will arise from time to time with respect to that as, for example, they have arisen here this morning. If counsel will remember to keep in mind that Judge Hubert will speak for the Tribunal with reference to that calendar and schedule, and if you have any informal problem that you wish to talk to the Tribunal about, please contact Judge Hubert and he will undertake to make whatever essential and necessary adjustments arise from time to time, and, in the same connection, if you have any problems with reference to the processing of books and documents, please bear in mind that Judge Marshall will speak for the Tribunal in regard to those problems and feel free to contact him if you have any indications of unnecessary or unusual delay in the delivery of your books.

I think that's all that I have in mind on behalf of the Tribunal.

Are there any other announcements before we proceed?

Dr. Prosecutor?

MR. SPRECHER: Mr. President, I had a rather long discussion with Dr. Boettcher during the recess concerning a number of problems where we came to complete agreement on a number of matters which I would like to set before you, with your consent, at this time.

With respect to documents identified during the cross examination of a defendant or of defense witnesses, Your Honors were already informed by Dr. Seidl that some problems might arise which the defense might claim as surprise. Now, I asked Dr. Boettcher if it would be all right if we used a regular form which we sent along to the defense with all the proper copies in both the German and the English which would merely state that these had been identified and that here were copies and that they would soon be presented by the prosecution at a convenient time in the future, and he indicated his general agreement with that procedure. I might say that if any other defense counsel has further suggestions we would be glad to ascertain them informally.

Now, pursuant to that arrangement, the following prosecution exhibits for identification have been delivered to the defense center, in both the English and the German, in the proper quantities and receipt has been acknowledged and, at this time, I would like to offer them in evidence. These constitute all the documents which were identified during the cross examination of the defendant Kirsch on last Monday morning. They are Exhibits 1840 through 1847, inclusive. I have given copies, in both the English and the German, to the Secretary of the Tribunal also and he will hand them up for the Tribunal. We intend, of course, to make no further comments about these documents.

THE PRESIDENT: The prosecution is now offering in evidence Exhibits 1840 through 1847, inclusive, which have heretofore been marked for identification only. Unless the Tribunal hears an objection, now those exhibits so designated will be received in evidence on behalf of the prosecution.

Since there is no objection, the exhibits are in evidence.

Dr. Dix?

DR. RUDOLF DIX (Defense Counsel for defendant Schmitz): Mr. President, as my colleague Siemers has already said, I am quite willing to wait with my presentation of documents until the two witnesses whom he mentioned have been examined. I should merely like to ask for permission very briefly to say something about the examination of my witnesses. I examined three witnesses and shall not call my client, Dr. Schmitz, to the stand at the present time. The Court knows the reasons from all correspondence and from the reports of the doctors. This is against the wish of my client and against my own original intention, but I believe that for the reasons which I have mentioned, I cannot take the responsibility of examining my client at the present time. I should like, however, to reserve the right, in the event that the situation changes favorably, to call the defendant Schmitz to the witness stand at a later time.

THE PRESIDENT: Very well. Now, the observations of counsel might be susceptible to an improper construction. The Tribunal itself is not expressing any view with reference to whether the defendant Schmitz does or does not take the stand. The Tribunal is informed generally with respect to his physical condition and on the representation of his counsel, the Tribunal understands that his counsel does not at this time desire to call the defendant Schmitz to the stand which is agreeable to the Tribunal. I may say, Dr. Dix, that at the proper time, the Tribunal has arranged for a medical examination of Dr. Schmitz and, if you will tell us when he is ready to depart for the hospital, we will enter the appropriate order.

DR. BERNDT (Defense Counsel for defendant Ter Meer): Mr. President, I have just heard that the defendant Schmitz will not be examined for the time being. If I now come to the examination of my client, Dr. Ter Meer, I will not be able to examine my client, Dr. Ter Meer, on whatever the defendant Schmitz may testify. Now, it may happen that the defendant Schmitz is examined later, after the examination of my client, Dr. Ter Meer. I believe that the Court will agree if I ask to reserve the right, in the event that the defendant Schmitz at a later time makes any statement

that might incriminate Dr. Ter Meer or affect his interests in any way, that I can reserve the right to recall my client, Dr. Ter Meer, to the stand after the defendant Schmitz has been examined. Does the Tribunal approve?

THE PRESIDENT: Without going into the matter of the substance of whatever you might undertake to establish by your client, we may say this, that if the defendant Schmitz testifies out of order and at a later time, he will then, of course, be subject to cross examination by counsel for the other defendants, and if his testimony develops facts which will make rebuttal on your part competent, there is no reason in the world why you should be denied that privilege. In other words, summarizing it this way, that no defendant is going to have his rights prejudiced by the circumstances that a defendant may be called to testify out of order. His rights will be recognized just the same as if the defendant had testified in the order in which you gentlemen have arranged to present your cases.

DR. BERNDT: Thank you. I have another minor matter to take up, Mr. President. You were kind enough to permit me to talk to my client, Dr. Ter Meer, yesterday and gave the same permission to my colleague, Dr. Flachsenner, in regard to his client, Dr. Puotofisch. Unfortunately, this was not possible. We were allowed into the Prison but the prisoners were not let out. Therefore, I should like to request that my client, Dr. Ter Meer, be excused today at 11:00 o'clock so that I may discuss the things with him today that I intended to discuss yesterday. Then I will be able to complete my books and hand them in.

THE PRESIDENT: That request is granted.

DR. BERNDT: Thank you.

DR. HOFMANN: (Defense Counsel for defendants Labros and von der Heyde): Mr. President, I can't unfortunately add my request to that of my colleague, Dr. Berndt, by asking that my clients may be recalled to the stand if other defendants come to the stand later and say anything affecting my clients'.

THE PRESIDENT: That applies generally to all defendants and it will

not be necessary to make special requests. That will be the policy of the Tribunal, as it applies to each defendant on trial.

Now, if there are no other preliminary matters, the Tribunal is now ready to hear the evidence of the defense.

DR. SIEMERS(Defense Counsel for defendant von Schnitzler): Your Honors, in the case for Dr. von Schnitzler I should like first to deal with Count I, Aggressive War. The prosecution tries to prove that the defendants knew of Hitler's aggressive plans and planned and prepared wars of aggression. It is a question of documentation whether the prosecution has proved this in the sense of the Judgment of the IMT. This is not the point at which I shall discuss this question, but the prosecution has offered a large number of points of evidence and I should like to deal with a few of these. First of all, the point that Farben used its commercial contacts abroad for economic espionage. I should like to examine the witness, Dr. Oberhoff, and ask the Tribunal to have the witness Dr. Oberhoff called into the Court Room.

THE PRESIDENT: The Marshal will bring in the witness Oberhoff.

DR. JULIUS OBERHOFF, A WITNESS, TOOK THE STAND AND TESTIFIED AS FOLLOWS:

THE PRESIDENT: Mr. Witness, you will remain standing for the purpose of being sworn, raise your right hand, say "I" and state your name.

THE WITNESS: I, Dr. Julius Oberhoff.....

THE PRESIDENT: Now, will you please repeat after me the oath.

Swear by God, the Almighty and the Conscience, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath).

You may be seated.

May I inquire, Mr. Witness, if the use of the two signal lights before you have been explained to you?

THE WITNESS: Yes.

THE PRESIDENT: Then, please remember to speak slowly and distinctly so that your testimony may be translated for the Tribunal and make your

answers as brief and direct as possible. Do not feel free or called upon to make extended remarks or to anticipate matters about which counsel may be inquiring. Counsel has a wide latitude to ask additional questions, and if he believes your answer to be inadequate, he will ask you another question. If you will bear these matters in mind, it will facilitate your testimony.

The witness is with counsel for the defendant.

Q.- Dr. Oberhoff, first of all will you tell us the date of your birth?

A.- 12 August 1898.

Q.- Please tell us briefly about your career, especially how you came to I.G. Farben and what your position was there.

A.- I am an Austrian citizen, a lawyer, and a businessman. In 1920 I went from Vienna to Germany to work for Farben, then the Friedrich Bayer and Company, one of the founding companies of Farben. This was my first commercial position. I was trained for several years in the dye stuffs field, commercially and in the technical field. In 1923, I was sent as a representative to Poland. In 1924, I came to Berlin to I.G. Rusco, the sales organization which had been founded by the various firms, that later became I.G. Farben, to take care of the Russian business. There I became Handelsbevollmachtigter (Commercial Plenipotentiary) and Prokurist. When business in Russia fell off at the end of the twenties, I was transferred to the central office at my own request, first to Hoechst and from 1930 on I was in Frankfurt. There, aside from the Soviet Russian business, I was in charge of Poland and the Baltic countries. Then in 1931, I became Commercial Plenipotentiary and in 1932 Prokurist. In 1934 the Latin American department was opened. The Vorstand appointed me to that position and I was in charge of this department until the end. In 1937 I became director. From January 1943 on, in addition to my other work, I took over Spain and Portugal, because my predecessor there had been drafted into the Wehrmacht.

Q.- The Prosecution has charged I.G. Farben with carrying on economic espionage through its representatives abroad, and says that this is shown especially by the fact that the foreign representatives of the I.G. Farben Division had belonged to the Party or had to belong to the Party, and held Party Offices. Moreover, I.G. Farben, with the aid of its organizations, sent agents of the OKW, or the foreign organization of the Party under

camouflage, abroad, and they took special jobs for these organizations. I should like to deal with these several points separately. First of all, tell us who your immediate superiors were.

A.- In Latin America that was Komersienrat Waibel. In Spain and Portugal I was directly under Dr. von Schnitzler.

Q.- Was Waibel also under Dr. von Schnitzler?

A.- Dr. von Schnitzler was a member of the Control Committee and in that capacity he was Komersienrat Waibel's superior.

Q.- You said that the sales organization in South America was entrusted to you from 1934 on. From what point of view were the representatives for South America chosen?

A.- I believe, counsel, before I can answer this question I must clarify one point. In 1934 when I took over the Latin America department, the Farben agencies had been in existence for a very long time -- in some cases for many decades. During my work there, there was no question of selecting agents, and the heads of these agencies had been in office for some time too. During my time there was only one change in the management of an agency. That was in Argentina. Dr. Breckmann had lost his hearing and had to resign. His successors were chosen among gentlemen who had been working in Latin America for some time. Therefore there was no selection of new people after 1934 except for the young recruits. This question, however, was very critical. There was great need of young men. I recall that there was such a scarcity at the time that the young men, both commercial and technical men, could not be supplied by Farben. I was forced to resort to advertisements in the newspapers. Quite a number of young men were sent out in this way, after they had received a year or two of training in the customary way.

Q.- If I understood you correctly, no new managers of agencies were sent out, but only other personnel under these managers. Now, in the selection of these young men, was any consideration given to political reli-

bility in the sense of National Socialism, or to what extent were those questions considered?

A.- They were not considered at all. I interviewed the people and tested them from technical points of view. I considered their appearance, their knowledge of languages. I was not interested in Party membership. To the present day I do not know of a large number of them, whether they were in the Party or not.

Q.- As the first document I should like to show you the minutes of a meeting of the Commercial Committee of 20 August 1937. This is Book 48 of the Prosecution, Exhibit 362, NI-4927, page 82 in the English Book, page 122 in the German. Dr. Von Schnitzler was Presiding over this meeting. Under number 2B, on page 84 of the English book, page 124 of the German book, the following statement is made: "There was general agreement that, owing to the ever increasing tendency towards industrialization in the world, it was imperative for the I.G. foreign organizations to have in all the larger towns abroad such persons as Verbindungsmonner who, by virtue of the positions they hold and their knowledge of prevailing conditions could judge correctly the developments of their own country and give advice to the management at home accordingly. For that reason the Commercial Committee thinks it advisable that the former institution of the Zafi-confidential agents ("Zafi-Vertrauensmonner"), who were already very active in this direction, be given increased consideration in their extended capacity as "I.G. Verbindungsmonner". Can you please tell us, first of all, what this institution of Verbindungsmonner, liaison men, was, and why they were considered necessary? Please tell us about the developments of how the sales organizations were created and answer my question in that connection.

A.- One must realize that the agencies developed historically partly as in the dye stuffs department or the pharmaceutical field, they had existed for decades, since these two fields were among the oldest in I.G.

Farben. These agencies were, however, so to speak, decentralized, in that each one was interested only in its specific field -- that is, dye stuffs or pharmaceutical products. Then in the course of decades, the sphere of the various I.G. Farben agencies at home became greater, the new spheres, in part, joined in the existing agencies. For example, the photographic field sometimes was attached to the pharmaceutical agency, and sometimes to the dye stuffs agency. Other newly created fields had no representatives at all, only a local man. Now, when the time came, I think it was about 1931, when currency difficulties came up throughout the world, more and more questions arose which did not affect only one sphere of interest, but all interests. To give an example, money transfers. It could happen that one agency had a large frozen asset whereas another agency needed money, and similar difficulties. Because of these difficulties, I believe, the institutions of the ZofI kind were set up. The men were selected for the individual country to take charge of these questions of currency, money transfers, rate of exchange, and so forth. In the course of time another important problem arose. That was the increasing industrialization of the Latin American countries which affected duties and imports. Up to now I have been reporting as I learned of the events later, but from now on I shall tell what I experienced myself. In connection with the trip of Dr. Ilgen, the idea came up that the institution of the ZofI confidential agents, be expanded into the institution of I.G. Farben liaison men, Verbindungsmänner, I just mentioned. They were to take care of all problems affecting Farben as a whole, for which there had not been any proper consideration in the individual departments up to that time. Men were chosen from the existing agencies in the various countries; men who were suited because of their personality, their experience in the country, and their qualifications. That is in general the history of this institution.

Q.- Dr. Oberhoff, you said that a complication developed because everyone was interested only in his own sphere of work and here a certain degree of centralization was necessary. Was the purpose of the Farben liaison men that a certain cooperation between the agencies in the various countries, that is divided according to countries, and not according to spheres of work, was to be established?

A.- If I understand you correctly you mean between the various countries of Latin America.

Q.- Yes.

A.- This idea may have been considered but as far as I recall it played a relatively minor role. The main consideration was to have greater cooperation of the various agencies in a specific country.

Q.- In the creation of this institution of liaison men, did any State or Party office or the Wehrmacht or the German Reich have any part, or did they influence the decision of Farben in any way?

A.- No.

Q.- The basic idea originated exclusively with Farben?

A.- Yes, as far as I know, exclusively with Farben.

Q.- Dr. Oberhoff, the Prosecution does not agree with you. They rely upon the records of the Commercial Committee of 10 September 1937 and 11 March 1938. I shall show you these documents. One is in Book 45, the other in Book 48a which you already have. First of all, the first meeting of 10 September 1937, Book 45, page 5 in the English document book, page 7 in the German. This is Exhibit 363, KI-4959. The meeting of the Commercial Committee was again presided over by Dr. von Schnitzler. Various members of the Vorstand and other gentlemen were present. We are interested in numbers 9 and 10 of the document. Number 9, page 9 in the English book is headed, "Meetings of the I.G. abroad." It is suggested that the I.G. Verbindungsmänner invite the other managers of the Sales Companies selling I.G. products in their area to attend periodical informal dis-

cussions on general economic problems. This agrees with what you have just told us, witness. I merely want to ask you, at this time National Socialism was already at its height and therefore I should like to make it quite clear — was this suggestion of the Vorstand made by instigation of any State office or for what reason was this suggestion made by the Commercial Committee?

A.— I never heard that this suggestion originated from outside and that seems highly improbable to me, because this suggestion results logically from what I have just explained. If certain problems of mutual interest were to be handled by the I.G. Verbindungsmaenner, it could be done by having a periodic contact between the managers of the various agencies.

Q.— The Prosecution relies especially on number 10 of this document which is headed "Staffing of our agencies abroad and collaboration with the A.O. (Organization of Germans abroad)." It is stated there that it is agreed that under no circumstances should anybody be assigned to the agencies abroad who is not a member of the German Labor Front and whose positive attitude to the new era has not been established beyond any doubt. It is also said that these men are to contact the local or regional groups and are expected to attend regularly at their meetings as well as at those of the A.O. This agreement with the A.O. seems rather surprising. Would you please explain how these negotiations with the A.O. and this agreement came about?

A.— The background is as follows. There had been friction with the A.O. which increased in the course of time. The A.O. had, on several occasions, attacked the managers of various agencies abroad who had opposed the so-called Gleichschaltung. We had great interest in helping these people who were very important to Farben and to help them to continue their work uninterruptedly. Both Mr. von Schnitzler and Mr. Maibel repeatedly endeavored to do away with this friction with the A.O. and to

clear the atmosphere. One must remember how things were under the dictatorship. There were two choices. Either one could resist openly — one could make this decision personally for one's self. It was different if one had a cause to represent as all of us had the interests of I.G. Farben. If one did not want to endanger this cause it was necessary to be clever. I was not present at this meeting of the Commercial Committee because I was not a member. But I was informed of this decision immediately after the meeting and I realized from the very beginning what this decision meant as a protection, especially for Mr. Waibel who was in charge of negotiations with the A.O. In my opinion this can also be seen from the wording of the decision. If one looks at the whole tenor one would expect the demand that all new people sent out be old fighters or at least Party members. Instead of that it says that they should be members of the German Labor Front. That, of course, was a matter of course and tautology, for as I recall, all members of I.G. Farben, like all employees of all big German firms, had been in the Labor Front since 1935. In Farben that was done by a collective action. I was not asked but one day I was informed that we were all members of the Labor Front. This happened years before this decision in this document. I myself was not impaired in any way in my selection of people by this decision but continued to proceed from technical considerations.

Q.— Did I understand you correctly that the negotiations were performed by Kommerzienrat Waibel — the negotiations with the A.O.?

A.— Yes.

Q.- Do you know who was in charge of those negotiations on the other side; that is, for the foreign organization, the AO, those negotiations that entered into this compromise?

A.- I was present at such negotiations two or three times when Latin American problems were on the agenda. We talked primarily to Mr. Christians. Once Mr. Schwarz was there and once I recall that Mr. Hess was present. Mr. Weibel also mentioned these names when he came back from Berlin and told us about such conferences. A few times he spoke to Gauleiter Bohle. I myself do not know this man.

Q.- As you said, then, all these negotiations were because of difficulties with the foreign organization.

A.- Yes.

Q.- Will you please tell us who Hess was so that there will be misunderstanding?

A.- Hess was the brother of the famous Hess and he had a fairly high function in the AO.

Q.- Who were Schwarz and Christians? They are also mentioned in the documents.

A.- I do not know the exact functions of these people. I believe that Christians dealt especially with Latin American affairs. What function Schwarz had I cannot tell you.

Q.- You said it was not much if the only agreement reached was that the newly sent out men would have to belong to the German Labor Front but the document also says that their positive attitude to the new era had to be established beyond doubt. Do you see any great obligation here and what did Farben have to do?

A.- I did not see any great obligation here but merely a general remark, not to say a mere phrase; I can only repeat that I did not discuss these things with the people whom I sent out.

Q.- But in addition to that, according to this agreement, the people

were to establish contact with the groups in this country and attend their meetings and those of the Labor Front. Was it thus possible for the foreign organization of the Party to influence the sales organization of I.G. Farben or to induce their representatives to undertake questionable actions abroad?

A.- I consider that highly unlikely. It would have been stupid to refuse to participate in meetings abroad because that would have brought on more friction but such meetings do not carry with them any great obligation.

Q.- I believe we must clarify one point: friction with a party is nothing so unusual and frightening. Did the wish of the foreign organization, that visits at least be made to the regional groups abroad — did this wish seem to you to be justified or not?

A.- It did not seem unjustified to me. If such a gesture could guarantee that one be left in peace to do one's work, then I believe that such a visit would have been worth the effort.

Q.- Was the AO a purely Party organization in the customary sense or did the AO have greater rights and greater power; that is to say, did it have any official position?

A.- Yes, it did have an official position. The foreign organization was an official agency.

Q.- The government is represented by a legation or a consulate; though, did you still believe that the foreign organization had some official position abroad and was in some sense a representative of the government.

A.- As I recall, the matter was such, at least, in Latin America that in the course of time the representative of the foreign organization — that is, the so-called Landesleiter, country leader, was incorporated in the embassy. In the first years that was not the case but later on I recall that some of this Landesleiter had some functions in the embassy or legation.

Q.- If the foreign organization had an official position then there must have been certain complications involving the consulate or the legation as overlapping of authority and so forth. Do you know anything about that?

A.- As far as I recall, there was such friction or overlapping of jurisdiction both abroad and in the central office in Berlin. I know this with certainty of the latter because one could see that the ideas of the Ministry of the Economics and of the Foreign Office on the one hand differed from that of the foreign organization on the other hand.

In the disputed matters which involved us, the set-up usually was: the Reichminister of Economic and the Foreign Office approved Farben's point of view while the foreign organization disagreed.

Q.- Dr. Oberheff, the Prosecution has offered four certificates which refer to this decision of the Commercial Committee which we have just been discussing and even quote it. They are in Document Book XLV, page 12 to 13 in the English, page 20 to 22 in the German, Exhibit 801, NI-2782. Do you have them before you, Dr. Oberheff?

A.- Yes.

Q.- There are four certificates here, all dated from the summer of 1938. They are supposed to have been signed by men sent abroad by Farben. These certificates reflect the wording of the decisions of the K.A., the Commercial Committee. Do you know of these certificates? Were these certificates always signed by the men who were sent abroad by Farben?

A.- No, I never had any such certificate signed. Counsel, do you know the names of the men who signed these certificates?

Q.- I believe the best thing would be to give it to you yourself. The names are hard to read. These are the photostatic copies of the original.

A.- I believe I can remember and I believe the signatures confirm my memory although they are very difficult to read --

Q.- Can you give us the names?

A.- I see Freiherr von Hassenbach. I can read that one. I cannot decipher the first two but, in any case, they are not names from the Diostaff's Department. I believe that these certificates were filled out by the Chemicals Department and I believe I can remember hearing about this at the time. It was not a general practice. Perhaps it was done by one other bureaucratic department. It seems a little peculiar to me that the wording of the commercial Committee decision was chosen for such a certificate. "It is agreed," doesn't mean anything when a person wants to sign a certificate.

Also I note that in the photostates the last sentence is stricken from the Commercial Committee resolution.

Q.- What is this sentence?

A.- That the people are to be supplied with material.

Q.- You mean the sentence —

A.- Please give me the page again.

Q.- Page 16 of the document book, No. 10 of the document.

A.- "The sales organization will see to it that their agents are adequately supplied with National Socialist literature." That is not included in the certificate. It was apparently in the original and it was then crossed out.

Q.- You can confirm that these bureaucratic and peculiarly worded statements, according to your knowledge, were of no significance.

A.- At any rate, they were not generally used. I did not have my people sign any such certificates.

Q Dr. Oberhoff, in these countries which were under you, as far as the sales agencies were concerned, were any representatives dismissed for political reasons at the request of the foreign organization, on the seizure of power of the National Socialists or later?

A No, as I already said, the agencies were extremely stable and the same men who had been in charge before 1933 in the Diestuffs agencies abroad remained there until the end, with the single exception of Argentina which I have already discussed. The successors of Mr. Bruckmann had also been in Latin America long before 1933 -- Mr. Moll in Argentina, Mr. Flinsch, who was head of the branch at Alianca in Sao Paulo and Mr. Sprung of the agency in Columbia.

Q Dr. Oberhoff, among the managers of these agencies who had been there for a long time, were they all German citizens?

A No, there were some who had double citizenship which was possible under International Law. For example, Mr. Hamers in Brazil, who had been living in that country from 1912 and some of them were foreigners, native Latin Americans, for example -- Mr. Moll in Argentina, Mr. Carneiro in Peru, Mr. Becker in Venezuela.

Q Did any of these heads of the agencies in South America hold any Party office and could you tell us who this was?

A As far as the heads of the agencies are concerned, none of them held any Party office and I do not believe that any of them belonged to the Party. I am speaking now of Latin America. In the Iberian Peninsula, Portugal, I know of one case where one of the gentlemen held a Party office; and in Spain, according to my knowledge, Mr. Birk in 1943 or 1944 joined the Party.

Q You just mentioned Mr. Hamers in Brazil and you spoke of the representatives who had been abroad for a long time. You mentioned some names. How often did these men come to Germany?

A On the average, once every four years. According to their contracts, these gentlemen had to leave every four years and only in emergency cases did they come to Germany in between. Most of these men, because of their long stay abroad, were more or less adapted to the country concerned. Most of them were people of certain property, financially independent, and because of the fact that they lived abroad they were not so much exposed to Party pressure as we in Germany and this, no doubt, explains the fact that they did not join the Party.

There is also something else that I know from experience. National Socialist ideas were represented abroad primarily by people who either had not been in the country long or for some reason or other had not succeeded very well abroad. Our representatives were highly respected in the colonies and this explains a certain antagonism between the old established people and the newcomers who are dissatisfied. That may be another reason.

Q Dr. Overhoff, just a matter for clarification: you just used the word "colonies". That might lead to misunderstanding.

A I mean, of course, not a colony in the legal sense but the Germans or the people of German descent living in the country in question.

Q Now, you say you have explained why there was no strong connection between the representatives of the foreign organization, of the Party and the representatives of the

foreign organization of I.G. Farben but there must have been men within the Farben organization abroad who were in favor of National Socialism.

A Yes, certainly, both among the younger people as well as a few who had been in the country a long time, but today, looking back, I should like to say that my feeling is that compared to the average of other German firms, at least in Latin America, the proportion of Party members was extremely low.

Q Did the Vorstand -- for example Dr. von Schnitzler or Kommerzienrat Waibel or anyone else -- ever give you instructions to test the political reliability of your representatives or to try to influence their political attitude?

A No, I was never given such instructions and I never attempted on my own initiative to exert any such influence. We talked as little as possible about these things. The decision as to whether a person wanted to become a Party member or not was up to the conscience of the individual and we avoided this delicate question. I have already said that to the present day there are a large number of people working for me abroad of whom I do not know whether they belonged to the Party or not and even in the case of important people I made a mistake.

For example, I told the Prosecution that Dr. Bank in Peru, the technical director, was in the Party. In the meantime, I have talked to an employee who came back from Peru and he told me that Dr. Bank was not in the Party.

Q That is sufficient.

A I, therefore, had to correct my impression.

Q You just said that you had no instructions from the Vorstand to supervise the political attitude of I.G. Farben

representatives. I am interested in making this point absolutely clear. In the course of time here in Nurnberg we have seen, especially in connection with Goering, that one can give instructions in the form of a wish, a request. Therefore, I must ask you: was any wish or request expressed to you or were you ever urged in any way without direct orders?

A No, by way of explanation, I may perhaps cite what happened to me personally. It was about the end of 1937. A strong pressure was exerted on me personally to join the party by the local group. But I was an Austrian citizen and consequently I was able to evade this pressure and I spoke about the matter privately with Dr. von Schnitzler and Dr. von Schnitzler then said to me: "Stay out of it as long as you can."

Q Dr. Overhoff, you were speaking of difficulties with the foreign organization. Did you yourself personally ever have any difficulties with any representative of the foreign organization abroad or any disputes?

A Yes, several times. I recall especially clearly one very unpleasant incident because it did not happen too long ago. In the year 1943 or 1944 I was in Portugal and it happened that at the same time the German diplomatic representatives came back from Chile. There was a private reception given by the Germans in Portugal. I went because I knew the ambassador, Mr. von Schoen, and I wanted to see him and the Landesleiter of Chile whom I had not known in the presence of other people suddenly attacked me in a rather ugly form and made reproaches to me because of the selection of my personnel in Chile. He said approximately the following:

"It is very well known that the head of your agency in Chile, Mr. Watsitz, is an anti-Fascist. He refuses every time to give me a few pesos for my collection. Your technical

Director, Dr. Taucher, is no better. He is an arch Catholic who doesn't want to have anything to do with us. The same is true of Mr. Theophile but the worst thing is -- and I must hold you responsible for this -- that not only these men who have been abroad for a long time have these ideas but even the young people whom you have just sent out; for example, Mr. Baumgarten is exactly the same."

And I had several such conversations.

DR. SIMERS: Mr. President, I beg your pardon for taking a little long.

THE PRESIDENT: Very well. It is entirely proper. The Tribunal will rise for its morning recess.

(A recess was taken.)

(AFTER RECESS)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The record may show that the defendants Hoerlein and
ter Meer have been excused from attendance at the session.

You may continue Dr. Sigmars.

DIRECT EXAMINATION (Continued)

DR. OBERHOFF:

BY DR. SIEGERS:

Q. Dr. Oberhoff, I should like to talk with you about the agencies
in the countries entrusted to you and clarify it absolutely. For that
purpose I shall have a list passed to you which contains all of the
names of the directors of the agencies in South America, Spain and
Portugal.

Your Honors, I shall incorporate this list in my Document Book. I
should like to have it identified now and I ask your indulgence that
no English translation has been made as yet; since it is only a list,
however, it is easily understandable in regard to the names that the
witness is going to mention.

THE PRESIDENT: Doctor I assume that at the proper time you will
give your Document a number.

DR. SIEGERS: Yes, Your Honor.

THE PRESIDENT: Then the record may show that at present, the witness
is merely refreshing his recollection from a document handed to him by
him counsel, and that it is the intention of counsel to embrace the same
document subsequently as an exhibit in the case.

DR. SIEGERS: In agreement with Mr. Sprecher, may I ask that this
list be identified as Exhibit No. Seemitteler No. 3.

THE PRESIDENT: That may be done.

BY DR. SIEGERS:

Q. Dr. Oberhoff, may I ask you to explain to me how this list was
drafted, and the details necessary for understanding this list?

A. In previous years, on occasions of a conversation that we had,
I made this list for a better understanding for our conversations. It

was made from memory since official documents, as to party affiliations and offices never existed.

It corresponds to the best of my knowledge and belief, and I do not believe that it contains many errors. However, I must say in limitation, that our contact with Latin America was disrupted at the end of 1941. Therefore, I must admit that it is possible that from 1941 until the end, changes may have occurred over there, of which I do not know anything. I do not think, however, that it is very probable.

I shall look through this list. Max Harners—

Q. May I ask you to tell me the main features of this list?

A. The name, the nationality, the question of whether a party member or not, whether this person held office in the party or not, any other offices held by those people, and whether he was a Farben liaison man, I.G. Verbindungsmann.

Q. May I ask you to explain this list and to explain the names of the few persons who were in the party or who had an office in the party?

A. I mentioned Harners. He was both a Brazilian and a German. It was generally known that Herr Harners was very skeptical in regard to National Socialism. He did not hold an office in the Party. Whether he held any other office, for instance in a school organizations, I do not know. I did not hear anything about it. He was the Farben liaison man.

The second name, Julius Marquardt, I do not know whether he was in the Party or not. I know nothing about offices that he held.

No. 3, Bruogemann, was already mentioned by me. He left the organization because of sickness.

Moll, who was a native of Argentina, therefore could not have been a member of the party or held any office there.

In the case of Sprung, I cannot say whether he was in the party. In my opinion he held no offices.

Flinsch, I can say with a certain amount of certainty that he was not in the Party. He was one of the black sheep in the eyes of the foreign organization.

Ringeltaube, in Uruguay was not in the party. He was against it.

On the other hand, Wilke was a Party Member. I know that for certain. To my knowledge, he held no office in the party.

Varsitz, in Chile, was already mentioned. At the occasion of my encounter in Portugal with the Landesleiter, Taucher was already mentioned, Theophile also, Corniche was a Peruvian, and the same applies to him as in the case of Hohl.

Dr. Bank in Peru was already mentioned by me. I thought that he was a party member, but I was erroneous.

Weisbach, in Columbia was a Columbian. He was against the Party.

In the case of Number 15, Sohn, I again had my doubts. I had originally put him down as a Party member in my list. Upon detailed reflection, I know, however, that he held a small office in the German labor front in Columbia. It happened sometimes that people took over such small functions so as to be able to stay away from the party. By doing so, therefore, I do not know for certain whether he was a member or not.

Becker, in Venezuela, was a native in that country.

Fischer, in Mexico, in my knowledge was not a member of the Party and did not hold any office. However, he was the deputy chairman of the chamber of commerce in Mexico. To my knowledge, he had already held that position before 1933. It can by no means be said that such institutions as the chamber of commerce are identical with party institutions. Organizations, such as the German-Mexican Chamber of Commerce existed already for decades. It is true that at a later time the party tried to infiltrate into these organizations. The next number, in Mexico, Thurmman, is a Mexican.

Q I beg your pardon. Do you know from perhaps since what time on Fischer was in the chamber of commerce?

A I cannot say that, but when I took over Mexico in 1934 he was already in there and for a considerable period already.

Q Thank you very much.

A Thurmman, who is a Mexican, had a French-Swiss wife, was against the Party.

Schumacher had a Mexican wife. He was not a member of the Party.

Max Schwaib, the director in Portugal, was a Catholic, and he was against the Party, too.

Roeder, Director of the branch in Lisbon, was a member of the Party and he was the wirtschaftsstellenleiter of the Party, that is to say, he

held an office in the Party. For explanation, may I give you a personal impression which Mr. Roeder made to me? He had a Mexican wife. I don't know the details, but before I took over Portugal in 1943 there were certain differences of opinion within the directorate of the agency. It seemed to me that because of these differences, Mr. Roeder's position had been somewhat of these differences, Mr. Roeder's position had been somewhat shaken. At any rate, he felt that that was so. I could imagine very easily that Herr Roeder looked for such an office in the party so as to be covered somehow and that if any new difference arose he might have some backing and use this party office to have any punishment of his own person interpreted as a measure against the party, that is my personal impression that I gained.

Q Dr. Oberhoff, do you know or can you explain to me what a wirtschaftsstellenleiter in the foreign organization actually means?

A Well, the auslands organization tried to build up their own organization abroad. That was a two-fold function for there were at least in the larger countries already the commercial attaches in the embassies. I always had the impression that people were doing double work, and that may have also been a reason why at a later time it was tried to take over these people from the foreign organizations into the embassies and delegations.

Q Then you can compare this with the commercial attaches?

A Yes, quite so all over the world.

Q The last name?

A Herr Birk, the director of our Spanish agency. I don't know what nationality he has. I don't know whether he is a Spaniard. He entered the party very late, I believe in 1943. He held no office in the party, but similar to Fischer, he was in the chamber of commerce, and as far as I know for quite sometime already. I believe that at the beginning of 1944 he became chairman of the chamber of commerce. At that time we talked about it and he did this at the express request of the German ambassador. The situation seems to have been that differences of opinion

arose with the last chairman of the chamber of commerce, so that the ambassador feared that that position might be entrusted to a radical party man and that he therefore wanted to have Fischer for that position. May I add that I myself always advised my people abroad against taking such positions even outside the party because it always meant a lot of work for these people.

Q Thank you, Dr. Oberhoff. And tell me please how many of these 23 leading gentlemen were members of the party for certainty.

A Three for certain, and three probable ones. Party offices were held by two and other offices also two.

DR. VON KELLER: Dr. Oberhoff --

THE PRESIDENT: Your name.

DR. VON KELLER: Dr. Von Keller, Dr. Oberhoff, had you said three party members for certain and three probable?

WITNESS: Yes, that is what I said, but I consider Marquardt probable and Sprung, I said that I didn't know, and Schm also.

DR. SIEMERS: Thank you very much, that is enough.

THE PRESIDENT: You had better state your name or the record will indicate that Dr. Von Keller is interrogating.

DR. SIEMERS: Dr. Siemers, I beg your pardon.

BY DR. SIEMERS:

Q You mentioned that difficulties frequently arose with the foreign organization of the party. How was this at the later time and during the war?

A The friction became more intense. In the Latin American countries, they were again and again two subjects with which we were concerned and which caused dissatisfaction in the foreign organization. One of them was the legal nature of our agencies, the fact that these agencies were considered as associations according to the law of the country concerned and the second subject was the personal attitude of the various directors of these agencies. In the latter point we held during these conversations that during the war should -- we did not have a possibility to intervene

and that any further work would have to be deferred by us until the end of the war.

Q You were able to follow this method during the war?

A Yes.

Q Can you tell me how you tried to give reasons for not complying with requests of the auslands organization before war began?

A We always pointed to the importance of having the workers represented. In regard to procuring foreign exchange for the Reich, our agencies were a very large factor in getting foreign exchange because of their sales organization and since foreign exchange was very scarce, we were able to get the assistance of the Reich Ministry of Economics and we were able to maintain and ascertain our position.

Q A new field--do you know of any special missions which were turned over to the auslands organization by mediation of the Farben agency and mission that had been given to you by the OKW or by the foreign organization of the party, by mediation of the directorate of Farben?

A No, I do not know of any such missions. I never received such a mission by Farben and I didn't have any mission to pass on any such missions to any other agency.

Q Do you know whether the OKW turned directly to employees of Farben abroad or to the directors of the sales organizations abroad by evading the direction, that is the Vorstand of Farben?

A Such cases are not known to me in the case of Latin America. In the summer of 1938 I was in Latin America last and at that time such special missions and OKW were not mentioned at all. It is true that I knew of such cases during the war in the Iberian Peninsula, but never officially, directly, but only indirectly. We found that such a contact must have been initiated, and that we found out when, for instance, we wanted to transfer an employee from one country to another and when we had objections raised against this procedure, or in the case of younger people of a class that had been called up for military service were suddenly not called

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up for military service were suddenly not called up but when they were permitted to remain in their particular position.

Q.- In order to shorten this somewhat, can you please give me one particular example in order to give me the character of action undertaken by Farben?

A.- I will give you a characteristic example which became quite discernible. This was a man, Roland Paschkes, who was employed with Sodanil, the Portugal representative, as technical man. I believe in 1943 or perhaps in 1942 this man was called up for military service quite regularly, that is, he left the service of the Sodanil and Farben. After a little while he wrote to us that he requested that he be reinstated for his position in Portugal, that is to say, to request OMV that he be made available for work with us and that it was quite possible that this request would be approved. In the meantime, we had put somebody else in this position in Portugal and were not interested in Herr Paschkes any more. When I was in Spain, to my great astonishment, Herr Paschkes visited me in my hotel in Madrid and he informed me that he was now in Spain by order and on behalf of the OMV and that the military attache, Col. von Wengstern, was interested in him and that the military attache wanted to speak to me about him. The military attache was actually waiting for me already in the lobby of the hotel. I went downstairs and von Wengstern explained to me that Herr Paschkes had worked for him, a colonel, during his activity with the Sodanil and that he, the colonel, was interested in seeing that Herr Paschkes was reinstated in his former position in Portugal. He asked me that I should make proper request. I told Herr Wengstern that I could not do so without getting in touch with the director of the Portuguese agency, Herr Schmir. I then consulted Herr von Schnitzler about this case, who was in Spain at that time. Herr von Schnitzler advised me to keep this man at a distance and that coincided with my own opinion. Herr Schmir was of the same opinion, therefore, we did not make such a request and Herr Paschkes was not again called to Portugal. That is a typical case, and as we found out subsequently, the OMV got in touch with people from our organization indirectly.

Q.- Before your visit in the lobby of the hotel, did you know this colonel von Wangstern?

A.- No.

Q.- Did Wangstern tell you what type of activity this man, Paschke was to undertake?

A.- He didn't mention it directly, but he told me, and I can remember this very well the following. Well, you don't have to worry, this man is not one of the proper political agents. For that purpose I use different people. He is merely to give certain economic reports to me by contacts that he has with Portuguese people.

Q.- Do you know of any cases in which the OKW or the foreign organization of the party tried to have confidential agents infiltrate into the Farben organization in a camouflaged way, that is, people who had nothing to do with Farben up to that time?

A.- I do not know of any such cases in Latin America, however, there were a number of such cases on the Iberian peninsula during the war and this applies to Spain as well as to Portugal. If I remember correctly, there were four such cases altogether.

Q.- During the presentation of evidence of the Prosecution, this matter was of particular importance and, therefore, I should like to ask you to describe these cases so that we have absolute clarity on this point.

A.- The first case concerned a certain Langhain. That man must have probably been an agent in Spanish Morocco; by virtue of an agreement which the Franco Government had concluded with the Allies at a certain period of time during the war certain Germans among whom Langhain had to leave Morocco. I believe it was the OKW who got in touch with us by way of our Berlin organization and requested us to employ this man in the Unicolor in Malaga in southern Spain, if possible. I talked about this case with Herr Pirk. His unfavorable attitude could very easily be given. The Uni-

color and only a very small business in Malaga and it would have been quite impossible to install a foreigner there. The second case concerned a certain Herr Boeger, who was supposed to be installed in our organization at the request of the OKW. After talking to Mr. Birk I rejected this request also. I also remember that towards the end of the war a request was brought to me by way of Berlin to the effect that Herr Birk should facilitate the trip to Spain of an SS member and that he should give his approval; in order to obtain such a permit to go to Spain, it was necessary to get two affidavits. I rejected this request, but I found that these people turned to Herr Birk simultaneously. At any rate, I received a protest telegram from Mr. Birk in which he rejected flatly to give his approval and this request was withdrawn by Berlin. The first case refers to Portugal. In this case a former employee of the German department of Farbon had given notice. After one or two years he appeared once more in Frankfurt and it developed that in the meantime he had gained some importance in Himmler's staff. He asked me for a conference and he explained that he considered it important to have a few people installed in this Sedanil, i.e. our agency in Lisbon. I explained to him that that was not possible, and he desisted from his request. In no single case did we comply with any such requests. I may add by explaining the manner in which I rejected these requests. I always pointed out that in Spain as well as in Portugal there were strict regulations for living by the police and strict regulations about work, and that foreigners were granted this privilege only in exceptional cases, for highly technical work. The aniline dyes, business requires long years of experience and technical education. If an outsider should enter this difficult business, it would have very shortly become evident that this person was not from the branch and the indigenous employees, the Spanish and Portuguese employees that were in the majority would immediately have become suspicious. That was the reason that I gave for making it possible to reject these requests.

Q.- Dr. Oberhoff, in order to prevent any misunderstanding... You said just now, I believe it was in the case of the last question, that Berlin withdrew its request.

A.- Yes.

Q.- May I ask you to explain what that means so that we know whether the Berlin agency of Farben withdrew its request or whether the OKW itself withdrew it?

A.- No, that referred to the OKW or perhaps even the SS itself in this particular case. The mediating agency was Farben in Berlin. In the case of the last instance, in order to make that quite clear also, the contact was not established by way of the Berlin Vermittlungsstelle, but directly and personally with myself in Frankfurt.

Q.- Did you at any time receive any orders from the OKW or from an agency of the Reich or from Party agencies?

A.- No, never.

Q.- Did you receive orders about reporting about your numerous trips abroad, a case which I believe happened very frequently?

A.- I did not receive such a request or order. I merely remember that for a certain length of time during 1943 or beginning of 1944, the Chamber of Commerce in Frankfurt demanded, as a counter-service for approving my exit visa, from me that I report about that trip. We discussed this request in the circle of our colleagues and we agreed to keep this report in general terms. I remember especially that we merely explained that in view of the high prices abroad, the foreign exchange made available to us was not sufficient. These reports were a formal matter only and they were discontinued very soon.

Q.- Please look at a document in Book # 45. This document is on page 14 in the English document book and on page 23 of the German. This is Exhibit 802, HI-631. This is a letter signed by the Kommerzienrat Haibol of the 13th of October 1942, and addressed to Dr. von Schnitzler, Haefliger

Ilgen, Mann and various other persons and there is reference to a luncheon for members of the Auslands Organization of the NSDAP. It is an invitation and on the appended list, in the well-known hotel Adlon in Berlin, on the 4th of November 1942. The Gauleiter Bohle was also invited and approximately twelve more persons of the foreign organization amongst whom this was Christians also was you mentioned, the Director of the Auslands Organization and who also was a Gauleiter. Did such meetings with the Auslands Organization take place frequently, and do you know anything about the reason for this luncheon?

A.- I believe this was the only meeting of this type. I myself was not present. I merely remember that Herr Weibel talked about this during our mail conferences. This matter was brought about because around that time our points of differences with the foreign organization had accumulated and that we wanted to clear the air. I believe this was the reason for this invitation.

Q.- Was Herr Weibel, the person who invited these gentlemen, the originator of this idea so that this tension could be cleared up in a diplomatic way?

A.- I don't know whether he had this idea. At any rate, he used it and executed this plan.

Q.- May I ask you to look at another document in book 45? It is on page 53 of the English and page 78 of the German document book. For the record, this is Exhibit 806, XI-7984. It is entitled "Lecture on Latin America in the Commercial Committee."

Dr. Oberhoff, you gave this lecture and apparently on 5 October 1938?

JUDGE (ORRIS): May I have that page again? I haven't been able to locate it.

MR. SPEAKER: Your Honor, XI-7984 in Book 45 at page 53 of the English.

JUDGE (ORRIS): All right, Thank you. You may proceed.

DR. SIEMERS: On the last page you have signed with the date of the

5th of July 1947 in Nurnberg, it is true. I assume that this is to be explained by the fact that the Prosecution submitted this document to you during an interrogation.

A.- Yes, that is correct.

Q.- Please explain the reason and the underlying idea of this lecture since the Prosecution according to the record stresses this document and considers it incriminating. First of all, may I ask you, is this document complete?

A.- No.

Q.- I am somewhat in doubt and I would like to know whether this document gives the complete picture of your lecture?

A.- No. I must say first of all that, as far as I understand it, this document is the draft that I made for the lecture to be delivered. It probably comes from my files. The document, as far as I can see, has been shortened and the statements to point 1, the questions regarding press, seem not quite clear to me in their present form.

Q.- I believe that's enough. I shall ask Mr. Sprecher to show me the entire document and I shall talk to him outside of the Court and may come back to it when the point arises.

MR. SPEICHER: Mr. President, the entire document is in.... I am informed by Mrs. Kaufmann that the entire document has been delivered to the Secretary so Dr. Simons should have no trouble.

THE PRESIDENT: Very well.

DR. SIMONS: Thank you.

It can be seen from the record, Dr. Uebornoff what the Prosecution considers incriminating. On page 82 of the German document book, page 18 of the original.

Mr. President, in this excerpt it is in the German version the last paragraph of the entire excerpt. I do not know whether we can tell you what page this is in the English document book. Mr. Sprecher tells me that

this is on page 53 E.

THE PRESIDENT: Thank you.

MR. SIMPES: Dr. Oberhoff, the Prosecution quoted during its presentation:

"A further point to be borne in mind in this connection is the need for precautions to prevent our representatives abroad from meeting difficulties resulting from the nature of the questions submitted."

It should read "our gentlemen" in the plural.

"Some of them are of a delicate nature affecting as they do the interests both from the point of view of policy and our economy, of the countries concerned. As people are getting a little sensitive in this respect even in Latin America, no documents should be found in the offices of the Verbindungsmann or their assistants which could possibly hang them or ourselves. This was another point which called for our consideration on the occasion of the lay rising in Brazil."

This is the end of the quotation and the end of the excerpt in the book.

First of all, I ask you one definite question. Tell me whether your lecture during this meeting had anything to do with the CP or with economic espionage and whether you had such a mission?

A. - No, that was not the case.

THE PRESIDENT: Dr. Ciesars, I think we shall suspend at this time because I would like to ask counsel for the Prosecution one little question before the recess.

MR. SIMPES: Yes.

THE PRESIDENT: Mr. Sprecher, during this morning's session I think some six or seven documents were sent up. May I ask, were those the documents that were formally received in evidence this morning?

MR. SPEECHER: Yes.

THE PRESIDENT: I wonder if you have a memorandum there that you can

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give us the exhibit numbers as applied to the document numbers and keep our record straight?

MR. SPEECHER: Just a second.

THE PRESIDENT: Let me call them in the order in which I have them if that is convenient.

Document MI-13517. Can you give me that exhibit number?

MR. SPEECHER: MI-13517 is Exhibit 1846.

THE PRESIDENT: Thank you. 13507?

MR. SPEECHER: That is exhibit 1841.

THE PRESIDENT: 13508?

MR. SPEECHER: Exhibit 1840.

THE PRESIDENT: 13506?

MR. SPEECHER: Exhibit 1842.

THE PRESIDENT: 13505?

MR. SPEECHER: 1843.

THE PRESIDENT: EC-2408?

MR. SPEECHER: Exhibit 1847.

THE PRESIDENT: MI-13511?

MR. SPEECHER: Exhibit 1844.

THE PRESIDENT: MI-13512, please?

MR. SPEECHER: Exhibit 1845.

THE PRESIDENT: Thank you very much.

MR. SPEECHER: Mr. President, I will try to have them marked the next time. I think that was an error on our part.

THE PRESIDENT: Very well.

The Tribunal will now recess until 1:30.

(A recess was taken until 1330 hours, 26 January 1948.)

AFTERNOON SESSION

THE MARSHAL. The Tribunal is again in session.

THE PRESIDENT: You may proceed, Dr. Siemers.

DR. VON KELLER (Defense Counsel for defendant von Schnitzler):

Your Honors, I ask your indulgence if I try to clear up a difficulty which arose in the translation of the testimony of the witness Overhoff this morning. In discussing the document which Dr. Siemers offered for identification as Schnitzler Exhibit 3, the witness said that of the persons listed there, three definitely belonged to the Party and three may have belonged to the Party, were doubtful. The word fraglich - doubtful - was translated probable, which in German means probable - wahrscheinlich. I believe that a better translation would be doubtful.

THE PRESIDENT: The Chair thought this morning when you went into that matter that it was one of calculation in the light of the testimony of the witness, but, in the interests of time, we let it be answered any way.

BY DR. SIEMERS:

Q Dr. Overhoff, before the noon recess, we were discussing Exhibit 808 which is on page 76 of the German document book, page 53 of the English Book 45. You said that this lecture had nothing to do with espionage or the High Command of the Wehrmacht. The passage which I read, and which was read into the record by the prosecution, contains a few points, however, which could seem odd and, therefore, to avoid any misunderstanding I should like to ask you to clarify these points definitely. We are speaking of the war economy interests of the individual states. The impression could be given that the lecture dealt with questions of war economy. How do you explain this?

A These things happened ten years ago, counsel. I cannot tell you all the details of the complaints which I brought back from Latin America at that time, but I do remember very well their principal tendency and I can give you some examples. In all questions, departments and offices of Farbon which were not so accustomed to contact with the

Latin American officials as the dye stuffs department, committed mistakes, formal mistakes in correspondence from which we had to fear some unfavorable reflection on our agencies abroad.

Q Can you give me an example which will clarify perhaps this point concerning interior politics and war economy of the individual states?

A Yes. One must remember that the Alianca was founded as a company under Brazilian law concerned with the sale of dye stuffs and chemicals. It was known as such in Brazil. The second thing to be remembered is that at that time in Latin America there was a very disturbed and unsettled time politically. For example, in Brazil the integralisten purge was taking place and I have referred to that here. Now, we must imagine that at that time Mr. Hamers, as head of the Brazilian Alianca, for example, received an inquiry in his capacity as I.O. liaison from Cologne-Rottweil about a powder factory which was to be built in Brazil. The Brazilian Government wanted to build such a powder factory and had arranged for a German contest in which Swedish and English firms participated. In connection with this, Mr. Hamers received a questionnaire. "How much powder was to be produced? What kind of powder? Etc." I am not an expert in this field, but I thought at the time, if now, due to this unrest, postal censorship is introduced overnight in Brazil and the Brazilian censor sees this letter to Mr. Hamers, what will he think? He does not know the details of this contest. He knows only that a Brazilian firm deals with dye stuffs and chemicals. Must he not become suspicious? Is it not possible that there will be an investigation of the Alianca? The investigation would show, of course, that the matter concerning the powder factory was perfectly all right, but might not this investigation give insight into matters which would endanger the position of the Alianca as an independent Brazilian firm which might bring considerable disadvantages, perhaps even disastrous disadvantages, from the point of view of taxes. Those were questions with which I was dealing at the time.

Q The, will you please comment also on the following sentence which reads:

"As people are getting a little sensitive in this respect, even in Latin America,"

Since you know your notes better than we do, perhaps you can tell us from your memory what this means?

A I may be able to give you an example here too.

At about the same time, the I.G. liaison man in Brazil was working on another project. This was the matter of setting up a Coproco factory in a remote district of Brazil near the Paraguayan border, and there were special laws in Brazil for this territory regulating, for instance, the stay of foreigners in the district. As far as I recall, only persons born in Brazil were allowed to live in the district. Then there was correspondence on the subject and, for example, it was said by Germany: "It would be quite impossible to have the leading position in this plant entrusted to a Brazilian since a Brazilian would simply not have sufficient experience." Here again I considered what impression such a letter would make if it came to the knowledge of the Brazilian authorities. It certainly would have offended the sensibilities which I mentioned here and an investigation might have been ordered to determine to what extent the regulations about the employment of foreigners were observed by the Alianca. There were special regulations in Brazil to the effect that of such category of employees only a certain percentage were allowed to be foreigners.

Q. Thank you. Please excuse me if I come back to the previous point once more. You were speaking of the contest held by the Brazilian government for the construction of a powder factory.

A. Yes.

Q. Can you give me the name of the powder factory, and can you tell me who was given the assignment to build it?

A. The powder factory was called Picette. Who actually did receive the assignment to build the factory I do not know, but it was not the Germans -- it was not Cologne Rottweil.

Q. Then I should like to show you another prosecution document and that is in Book 49. I shall have the book handed up to you. Mr. President, this is in book 49, page 126 of the English, page 175 of the German. This is Exhibit 936, NI 1322. This is a letter addressed to you, Dr. Overhoff. It deals with Spain. It comes from the Economic Political Department in Berlin. The request of Oberregierungsrat Koppelman is reported to you that you see to it that Lieutenant Colonel Boecker goes to Spain for the counter-intelligence. He is not to appear to be an employee of the authorities, but he is to pass himself off as a commercial employee. Was Oberregierungsrat Koppelman in the OKW or where was he?

A. No, in the Ministry of Economics. He was the referent for Latin America and the Iberian Peninsula.

Q. Then the request of the High Command had gone through the Ministry of Economics to the Economics Political Department of Farben in Berlin and from there to you, is that right?

A. Yes.

Q. You have already mentioned Boecker once before.

A. Yes.

Q. Do you recall what you did after you received this letter? With whom did you talk and what did you answer? We unfortunately do not have the answer here.

A. As I said this morning, I wrote to Mr. Birk, the head of the Spanish Agency. As I recall I actually talked to him on a visit in Spain. Mr. Birk and I agreed that this request, like all similar requests, had to be refused, and I did refuse it. Mr. Boecker was not assigned to our Spanish organization. Whether he went to Spain at all I do not know. I never saw him.

Q. How did you go about refusing. How did you do it?

A. Through the Berlin organization, just as the request had come to me. I sent the answer back through the same channels. I cannot tell you whether it was done in writing or by telephone.

Q. Before you made your decision, did you have to consult a man from the Vorstand or did you consult anyone from the Vorstand?

A. Whether I did so in the Boecker case as I had in the Ischke case I cannot say, but on principle I talked to Dr. Von Schnitzler about such things several times and I had instructions from him to refuse such requests whenever possible, and I was able to do so in all cases.

Q. I shall then ask you to look at another document. That is the one before this one. That is page 126 in book 49 in the English and in the German it is on page 173. III 7609. It refers to case in Portugal. Two young employees of Sodanil were in the service of the Abwehr. One was called Mauchshagen and the other Sichtermann. Can you explain this case to us?

A. Yes. This is one of the cases which I spoke about this morning. The OKW did not get in touch with Farben but with representatives abroad. That is another such case where this fact was later accidentally revealed. These two men, Mauchshagen and Sichtermann, although their age group was called up for military service, were not drafted, although we had released them for military service -- that is we had not asked for a deferment. The case was discussed when I was in Portugal together with Mr. Von Heider and Mr. Walloth who wrote this letter. We did not like this incident. The Portuguese employees had to specially notice that these young men were staying in the agency because everyone in Portugal knew that this age

group of the Germans had been called up for military service. We therefore discussed what could be done in order to bring about a change here.
Mr. Von Heider ---

THE PRESIDENT: Counsel, my attention has been called by an associate to the fact that our record does not indicate that this affidavit is in evidence. I should like to know what your impression is in that regard.

DR. SIEMERS: I was of the opinion, Mr. President, but I may be mistaken.

MR. SPRECHER: Mr. President, that is what I rose about, but I didn't want to interrupt counsel. It is not in evidence.

THE PRESIDENT: Very well. Then it should not be the subject of this kind of inquiry. If the circumstances about which the witness is testifying are otherwise relevant and he has personal knowledge of it, it perhaps might be presented on a different theory -- but the affidavit itself would not be a proper subject of inquiry if the affidavit is not before the Tribunal.

DR. SIEMERS: I shall withdraw the question on this document and I shall ask the Court to consider this testimony as merely an example by way of illustration of the cases when Farben did not accede to the requests of the OKW.

THE PRESIDENT: Very well.

BY DR. SIEMERS:

Q. Had you finished, Dr. Overhoff, or do you have anything to add just so that your story is not incomplete in the record? Just a moment. I have noticed that the translator has not been able to keep up with you. Would you please speak a little more slowly, especially when you are making complicated statements?

A. I had merely one sentence to add. I wanted to say that Mr. Von Heider, in his capacity as Abwehr man of Farben, had undertaken to go to the OKW in Berlin about these two men and to demand that they be called into the Wehrmacht. He did so, but his request was not complied with and thus the two men remained in Portugal.

Q. Dr. Overhoff, this is the last thing on this subject. Do you know that between Admiral Canaris, who was in charge of counter-intelligence in the OKW, and Professor Selg, the chief Farben lawyer, there was an agreement according to which Farben would not be called upon to do any work in connection with counter-intelligence, otherwise there would be danger of impairing economic interests and interfering with I.G. exports.

THE PRESIDENT: Just a moment.

MR. SPEECHER: We object to that as being very leading. Of course the harm has been done, but I definitely would like to call the Tribunal's attention to the fact that it is not merely leading but it's calling for a conclusion of the witness on even a secondary point.

THE PRESIDENT: That objection is well taken and is sustained. Ask the question, Doctor, in a way that will leave the witness free of suggestions as to what the answer should be.

BY DR. SIEMERS: I beg your pardon. Dr. Overhoff, do you know whether there was any agreement between Farben and military intelligence regarding the matters which we have been discussing today?

A In connection with the case which we have just been discussing, Mauelshagen and Sichtermann, I recall that Mr. Von Heider, when we discussed this case in Portugal, said, how can this happen. There is an agreement between Farben and the OKW that Farben people are not to be used for such work. That is all I know about it.

Q You don't know who concluded this agreement?

A No.

Q The last document which I want to show to you is a letter from the foreign organization, which I should like to hand to the Tribunal as well. These are two short letters which I shall submit to the Tribunal as exhibits. At the moment I do not have them translated yet, but perhaps the prosecution has translations. I found them among the prosecution documents. At the moment I should merely like to offer the document for identification as Exhibit Number 4 Schnitzler and later I shall put it into evidence. It is a letter dated 10 August 1943 from the foreign organization signed by Detleffer Christiansen whom you have already mentioned, addressed to Farben, attention Kommerzienrat Waibel. It is said here that the A.O. speaks about Mr. Flinsch's negative attitude towards National Socialist Germany. The second letter, also NI 4434, is the answer of Mr. Waibel to the foreign organization saying that they are surprised about the complaints with regard to Flinsch because Mr. Flinsch is a highly respected man. In the last paragraph Kommerzienrat Waibel says that he can not ask Mr. Flinsch for comment by telegraph, but that he will take the next opportunity to submit this complaint to Mr. Flinsch.

Q Can you please tell us what developed out of this affair -- whether Mr. Flinsch remained in his position and what you remember of this matter in connection with Kommerzienrat Waibel?

A You have here a typical case, counsel, as an example of what I said this morning. One of the numerous attacks of the A.O. on one of the persons abroad, a very important person to us, giving non substantiated charges resulting simply from the fact that the man concerned was not in

the Party or that the Landesleiter in the country in question did not like him. And in the answer of Mr. Waibel you see the method which I mentioned this morning of frustrating such attempts to deprive us of our most important agents. Mr. Flinsch is praised in general terms and it is said at the end, unfortunately the war prevents our doing anything at the moment. And nothing was done. Mr. Flinsch remained in office.

Q Dr. Oberheff, to conclude my examination I should like to ask you to tell me how long you have known Dr. Von Schnitzler, how you worked with him and I would be grateful if at the same time you would, very briefly, give us a sketch of Schnitzler's personality, which I am sure the Tribunal will permit, especially considering the fact that I shall not call Dr. von Schnitzler to the witness stand.

A I have known Dr. von Schnitzler since about 1923 or 1924. We became somewhat closer acquainted in 1926 to 1929 when we made several major trips to Soviet Russia together. In 1929 when I was on leave — that is not on business — I saw Dr. von Schnitzler at the World's Fair in Barcelona where he was a commissioner. In 1943 when I took over Spain and Portugal the contact became especially close. Since there was not intermediate authority between Dr. von Schnitzler and myself we discussed everything directly and we made several trips together. In the meantime I had very frequently been at cartel meetings with Mr. von Schnitzler and I also was in his house frequently and I believe that I came to form a certain judgement of him. I can only say that he was the finest and most generous superior whom I know during my twenty-five years of work for I.G. Farben. He was a man of the world and of international upbringing in the best sense of the word, predestined by his ability, his knowledge of languages, his pleasant nature, to take charge of international negotiations. He was one of the most important members of all international chemical discussions between the two wars and as such he and his personality were widely known. There is hardly anyone who came into touch with him in this way to whom it could have occurred to see in him either an open or secret follower of the National Socialist system.

I myself can say perhaps more on the subject because in many talks with him, some of them private, I discussed political subjects, but they were not all private talks. I remember very well during our trips to Spain and Portugal that he talked in a large circle in the presence of Mr. Schwaib, for example, and Mr. Birk — spoke so frankly or so critically and sarcastically about the course which had been taken in Germany, that I secretly wondered whether some indiscretion might bring about disastrous results from his frankness. In conclusion I might perhaps give a little example. I remember very well that during the war I was invited as a guest to Mr. von Schnitzler's house, which was partly destroyed already. There were about fifteen or twenty persons present and he told a little story. I will probably not be able to tell it as well as he did. He said last Sunday he went for a walk and from the house across the street Guleiter Spranger came out, who did not like Farben very much. They exchanged a few words, they said good-bye very coolly and each one had the feeling of the other "He is a dead man." Perhaps I may explain that. What he meant was that Spranger thought the war will be won very soon and then this bourgeois will disappear and would be replaced by a real National Socialist — and Mr. von Schnitzler thought, the war is lost and you good Spranger, won't be in your job very long. That may perhaps show Dr. von Schnitzler's attitude.

Q Thank you, Dr. Overhoff. Just one thing I would like to ask you. You spoke of a cartel meeting. These were then meetings with Swiss, French or English people. You said that Schnitzler was pleasant and conciliatory and smart in his manner. Can you tell us anything about his attitude toward the French? As you know that is of special significance here because of Francolor which has nothing to do with you otherwise.

MR. SPEECHER: Mr. President, we come back to the point of counsel telling the witness what is a special role and what isn't a special role here. I think the Tribunal and everyone will understand what the role is if the questions merely come out in a simple way which

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shows their relevance. But the main point I'd like to raise is how a question this general can be of any particular help. What was Mr. von Schnitzler's general role with the French. We object to it as being vague, speculative, tending to an unresponsive answer.

THE PRESIDENT: Well it may border on that. Mindful of the fact that you have a right to cross-examine if you think the inquiry is too general, we will overrule the objection.

Q. Dr. Overhoff, will you please answer the question?

A. I personally always had the impression that Dr. von Schnitzler considered it especially important to be on good terms with the French, that he considered the French part of the cartel agreement his special pot, perhaps because this was the first step for the arrangement of the big cartel, the German-French agreement. Perhaps Dr. von Schnitzler felt especially at home in the French language and especially familiar with French circumstances. I must say that for me personally his conciliatory attitude to our French cartel friends seemed to go a little too far at times and that this brought about considerable difficulties for me in my work at times. For example, this was a large part of the work that I had to do in Latin America -- and I must confess not the most pleasant part because French --

THE PRESIDENT: Defense counsel, I think perhaps the witness has answered your question. He is getting into the field of his own personal relationship with the defendant which would hardly be responsive to your inquiry. You perhaps better ask another question.

DR. SIEMERS: Mr. President, I just want to ask Dr. Overhoff what the difficulties were--or let me put it like this:

Q. What did Dr. von Schnitzler do that made these difficulties?

A. Within the cartel the French had not fulfilled their quota. In order to help them to fill their quota, Dr. von Schnitzler ordered that we had to turn over part of our diestuff business in South America to the French and I had to do this on my trips in countries in which the French up to then had not been conducting any diestuff business at all.

DR. SIEMERS: Thank you. I have no further questions.

THE PRESIDENT: Now, Counsel for the Defense this witness has been quite thoroughly interrogated and, I may say, properly in the view of the Tribunal. We are most anxious that you do not go over the same field again or get into matters that are inconsequential or what might be termed of trivial character. I would be glad to permit any other members of

the staff of defense counsel now who have some matters that they consider important to interrogate this witness if they so desire. Is there any such request?

BY DR. LINGENBERG (Counsel for defendant Ilgner):

Q. Dr. Overhoff, I should like to ask you just a few supplementary questions going beyond what has been discussed already. By way of introduction, would you tell me during what years you yourself were in South America.

A. 1935 to 1936 I made a 9-months trip through all the Latin American countries. In 1937, in the Spring, I was in Brazil, Argentina and Chile for about three months and the last time, in the middle of 1936, I was in the same three countries that I have just mentioned.

Q. On your trip did you get any impression as to whether the German export situation to South America might seem endangered by the political and economic offensive of other countries?

A. One can say that for 1938. In 1938 in a large part of the Latin American press there was a campaign, apparently directed against Germany, and this was parallel with a large export and capital offensive of the United States in Latin America.

Q. Was the export business of Farben threatened by this offensive?

A. Yes. In my field we had considerable struggle with American industry and we endeavored to reach certain agreements with the American firms to reduce this competition. As for the capital offensive, we had the impression that there were certain domestic political reasons at this time which induced the American firms to devote more capital to the South American market—for example, the creation of artificial silk factories in Argentina. That is only one example.

Q. How long did this threat to German production last, in your opinion?

A. I believe this developed gradually into the war. It was never reduced. It increased constantly. After 1938 I did not go over any more.

Then I was dependant on indirect reports.

Q. Dr. Overhoff, do you know that Farben was prepared to recognize, let us say, America's natural rule in the sphere of external economy and that specifically Dr. Ilgner in his Latin American trip in 1936 expressed this in words and in writing?

A. I recall that Dr. Ilgner—I don't remember where he held a lecture. I read this lecture and he expressed such ideas in it.

Q. Can you tell me anything about Dr. Ilgner's attitude toward the problem of industrialization?

A. He was in favor insofar as he advised that Farben should attempt to incorporate itself into the industrialization process going on in Latin America.

Q. Do you know anything about Dr. Ilgner's attitude on the relationship of the countries concerned, especially, to be brief, the so-called majority question?

A. Yes, he advocated collaboration with people from the country and even under certain circumstances giving them the majority. I remember that.

Q. Dr. Overhoff, do you know anything about Dr. Ilgner's readiness to collaborate with American groups in Latin America?

A. Yes, he was also positive towards such subjects and this collaboration was actually realized with a national partner and with a big English-American group. That is Dupont and I.C.I. in Argentina.

Q. These intentions of Dr. Ilgner, did they concern the economic interests of Farben—and that means German industry—or do you think they were for the political interests of NSDAP?

A. No, not the latter. They were always interested in Farben.

Q. Dr. Overhoff, the question of foreign organization has been gone into in some detail already. I, therefore, have only one question on this subject which I want to put to you.

Can you tell me whether the increasing significance of the AO had any

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effect on the relation of I.G. Farben with the Reichminister of Economics
regarding foreign business and agencies abroad?

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A I recall, for example, that from a certain time on — I am afraid I cannot give that time now — the necessary approval of the Reichminister of Economics for a Financial Transaction in Latin America — for example, for a reorganization in the structure of the agency — was made dependent on previous approval of the AO. The Reichminister of Economics granted approval only on the condition of approval of the AO. That meant that we could move economically only if we had in some way convinced the AO that the step was necessary.

Q Thank you. Tell me: was any distinction made in the management of Farben between the normal economic interests of Germany and what the Nazi Party wanted? In other words, was a distinction made between German and Nazism?

A Oh, yes, definitely.

Q As regards the personality of Dr. Ilgner, can you tell me whether he always, and in every case, was in favor of international understanding and peaceful collaboration?

A Yes, that can be seen from, for example, these lectures which I have just mentioned; but in any case I never heard that he was ever in favor of fighting.

Q Dr. Overhoff, now I have a few questions on the subject of the Farben liaison men. Please tell me what was, in your opinion, the main duty of an I.G. Farben man?

A I believe, counsel, I explained that rather thoroughly this morning. I perhaps could add that at regular intervals, usually once a month, these men were expected to make a report on important events in the country concerned.

Q Can you tell me who appointed these liaison men?

A The KA, the Commercial Committee.

Q And on what basis were these men chosen by the Commercial Committee?

A The people were chosen who had the best connection in the country, the most experience in the country, the greatest social esteem, the highest

standards. In Latin America these were naturally either taken from the Dyestuffs or Pharmaceutical departments since only these two had a complete organization.

Q This morning you explained to us very clearly the basis on which the dyestuffs salesmen were chosen. For example, to make it quite clear, I should like to go into this question on behalf of the so-called Farben liaison men; that is, whether in the selection of these men nationality and Party membership were considered.

A No, in order to make that quite clear, Doctor, the heads of our sales organizations were the same persons as the ZEFI confidential agents, and later the Farben liaison men. That is -- Mr. Hamers, a non-Party member, a Brazilian and a German, was head of the Alliance and later on he was a ZEFI confidential agent and later he became an AO liaison man; and it was the same in all countries.

If you will look at the list which we discussed this morning you will find that of the Farben liaison men, as far as they came from the dyestuffs department, not a single one in Latin America belonged to the Party. You will see that Party membership was not considered.

Q Then I no doubt understood you correctly to say that the introduction of this institution of Farben liaison men which developed into the ZEFI confidential agents did not involve any change in personnel.

A No, they were the same men.

Q Dr. Overhoff, can one establish any connection between the activity of these liaison men and the activity of the AO?

A No.

Q Did you read reports from these Farben liaison men?

A Yes, hundreds of them; I might say more than I wanted to.

JUDGE MORRIS: Counsel, it really seems to me you are transgressing beyond the suggestion of the President of the Tribunal a little while ago. I can readily see where you may properly go into the matters affecting your client, Dr. Ilgner personally, but now I believe from your last group of questions you are travelling practically the same road that Dr. Siemers

travelled this morning and he did a rather thorough job. Of course, there is no doubt that where there is a lot of counsel every one can think of a few more details to add but it is my impression, at least, that you are transgressing just a little bit on the caution that the President gave you at the beginning of this particular session.

DR. LINGENBERG: Judge Morris, I did not quite know whether it has been brought out as it seems to be necessary that the dyestuffs salesmen of whom Dr. Overhoff had been speaking are not necessarily identical with the Farben liaison men. Often they were the same but not always and I merely wanted to bring out that the statements made about the dyestuffs salesmen this morning also apply to the liaison men.

JUDGE MORRIS: Well, don't you think you have accomplished that point now? I think we on the bench here rather understand that and have for some little time past. I think that you have pretty well established even this additional point which you have suggested.

DR. LINGENBERG: If the Court is of the opinion that this matter has been clarified, then I shall not put more questions.

THE PRESIDENT: Anything further, Gentlemen of the Defense? If there is no request for further direct examination, the Prosecution —

DR. LINGENBERG: Mr. President, I believe I was misunderstood. I do have some questions on some other questions.

THE PRESIDENT: Very well.

Q Dr. Overhoff, in connection with the Prosecution charges, the question of the assistants of the liaison men plays a certain part. Since this part has not been touched upon at all, I shall ask only one question in the interest of brevity and that is whether you know whether such assistants were ever sent out on any large scale.

A Not on a large scale but only for the most important country; as I recall, for Brazil, Argentina, Mexico and Spain.

Q Dr. Overhoff, your lecture has already been discussed at length so that there is merely one point that I should like to go into in the Prosecution Exhibit 819 which Dr. Siewers has discussed with you. This

is a record of the Commercial Committee meeting. There is a sentence which reads as follows:

"It is again pointed out, in view of the political condition in South America, that in correspondence with our agencies, we use all possible precautions."

"What did this mean?"

A I believe, Doctor, that I have described that in the examples which I gave to Dr. Simers. You will remember the powder factory, Picette, and so forth.

THE PRESIDENT: I think you are correct, witness -- that you did describe that and I am sure the Tribunal does remember. I think you gave us three illustrations this morning how that operated.

Q Was the I.G. Liaison men or the assistants, as far as their sales function was concerned still directly under the old sales combine?

A The I.G. Liaison men, yes; the assistants were under the Berlin offices who sent them out, the Farben office in Berlin, the office of the Commercial Committee.

Q Dr. Overhoff, we also discussed Exhibit 936. If you recall, this is a question of sending Beecker to Spain. This Exhibit 936 is a letter from the WIPO. That is a department which was under my client and it is addressed to you. This letter of the WIPO to you speaks of the well known objections which WIPO had to this plan. I would like to know whether those are the same objections which you have explained in reference to yourself.

A Yes, they were the same objections which I described this morning. I had discussed them with the gentlemen in Berlin so that they could present them to the OKW when the occasion arose.

Q I now come to the final point. Did you ever talk to my client, Dr. Ilgner, about military counter intelligence questions?

A No.

Q On your trips to South America, especially in 1937 and 1938 did you ever hear from any source any indication that Dr. Ilgner on his

Latin American trip in 1936 had dealt with any counter-intelligence questions?

A (No response).

DR. LINGENBERG: I have no further questions.

THE PRESIDENT: Any further interrogation on behalf of the defendants? If not -- just a moment, please.

BY DR. HOFFMANN(Counsel for defendant von der Heyde):

Q Witness, you were speaking of reports, monthly reports which came from the liaison man in Latin America. Did I understand you correctly? Did you see all these reports?

A I cannot swear that I saw all of them but I certainly saw very many.

Q What did the reports say?

A Usually they were routine reports that began with a survey of the political situation -- for example, changes in legation posts; then came economic news, trade treaties, clearing, traffic news, general economic news, production in the country concerned, imports, exports, financial news, rate of exchange and so forth and outstanding cultural news. In the course of time a definite plan had developed for these reports in each country. The reports differed, depending on the talents as a writer of the man in question. In general, they contained excerpts from the press of the country. They were rather valueless to me personally because I read the press.

Q Was there anything military in them?

A No.

THE PRESIDENT: Anything further, gentlemen? If not, the Prosecution may cross examine. I will say to you, Mr. Prosecutor, that this witness has been very thoroughly examined and we would not encroach upon your right to cross examine further than to observe that the length of time consumed is no test of a good cross examination.

MR. SPRECHER: Mr. President, the Prosecution feels that it does have an obligation to expedite these proceedings by avoiding any

unnecessary cross examination and, indeed, we certainly feel that that is practically wholly unnecessary here although I will venture to risk two or three questions.

THE PRESIDENT: You may have more than that.

MR. SPRECHER: We feel that is particularly true where the contemporaneous documents by and large speak for themselves. I recall that you did point out during the Prosecution's case that a short cross examination or none at all by the defense was no admission as to what the witness has said and, with that understanding in mind, we will be through in a very, very short time.

THE PRESIDENT: Very well.

CROSS EXAMINATION

BY MR. SPEECHER:

Q Witness, you neglected to mention in your direct examination when you did join the NSDAP -- what was that?

A That was at the beginning of 1938.

Q Now, Witness, you spoke about the defendant von Schnitzler's love for France. You participated in the meetings of the Farben committee -- in the large Farben committee during 1941, did you not?

A Yes, at the large Farben committee -- Yes.

Q And do you remember whether the defendant, von Schnitzler, reported in detail to you about the participation of Farben 51-49 in Francolor and the closing down of some of the French dye stuff groups in connection with the Francolor agreement- do you remember?

A Yes.

MR. SPEECHER: No further questions.

PRESIDENT: Call the next witness. Witness, you are excused. The Marshal will escort you away. Just a minute before you go. Get the name of the next witness.

DR. SIEMERS: I should like to call the witness, Dr. Schlotterer.

PRESIDENT: Bring the witness on your return, Mr. Marshal. Counsel would it expedite matters if we would take our recess a bit early and give you time to organize your material?

DR. SIEMERS: I was about to suggest that, Mr. President.

PRESIDENT: We will rise and take our usual recess.

(A recess was taken.)

GUSTAV SCHLOTTERER, a witness, took the stand and testified as follows:

THE PRESIDENT: Witness, will you please stand for the purpose of being sworn? Raise your right hand, say "I", and state your name.

WITNESS: I, Gustav Schlottterer...

THE PRESIDENT: And now please repeat after me the oath:
...swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

WITNESS: (The witness repeated the oath).

THE PRESIDENT: You may be seated.

May I inquire, witness, if the use of the signal lights before you have been explained, or if you know how they operate?

WITNESS: They were not explained to me, but I know about them.

THE PRESIDENT: Very well. Then also, remember to speak slowly enough for your testimony and the questions that are asked to be translated and transmitted to the Tribunal, and do not feel called upon to make extended statements or to volunteer information. If the questions that are asked do not bring forth the testimony that counsel wishes, he will ask you further questions.

The witness is with the counsel for the Defense.

DIRECT EXAMINATION

GUSTAV SCHLOTTERER

BY DR. SIEMEL (Counsel for Defendant von Schnitzler):

Q. Dr. Schlottterer, may I ask you to give me the date of your birth?

A. The 1st of March, 1906.

Q. Where were you born?

A. In Biberach, in Württemberg.

Q. Describe briefly your professional career and especially your entry into the Reich Ministry of Economics.

A. In 1933 I was Economic Secretary of the Hamburg Lord Mayor Krogmann, and during that year I was appointed by him to be the chief

of the Hamburg Agency for Trade, Economy & Shipping. In 1934 the then Reichsbank president and the Reich Minister of Economics, Dr. Schacht, approached me and told me that he wanted to develop his Economic-Political Department in the Reich Ministry of Economics still further. For that purpose, he said, he was looking for some men who had experience in dealings with foreign countries and with merchants. After some reflection, I accepted, and at the beginning of 1935 I joined the Reich Ministry of Economics as Ministerialrat and Director of the Department for South & Central America. South and Central America was entrusted to me because the Hamburg merchants were important in this particular field and because Dr. Schacht knew of my connections with the Hamburg merchants and wanted to utilize them.

I was in charge of the South American department until 1937. In 1938 I was appointed Deputy Director of the Foreign Economic Department of the Reich Ministry of Economics, and temporarily the Director of the Export Department. And I was at the same time promoted to the rank of Ministerialdirigent. Those offices I held until 1941. From 1941 to 1943 I was the director of the Eastern Department in the Reich Ministry of Economics; and from 1943 to '45 I was Deputy Chief of the Foreign Economic Department.

Q Mr. Schlottner, we are especially interested in the period shortly before the war and during the beginning of the war. That is the period when you were the Deputy Chief of the Foreign Department in the Reich Ministry of Economics, and the Chief of the Export Department.

First of all, I want to submit a document to you that is rather lengthy and which the Prosecution submitted as Exhibit 1041 in Book 51. This is on page 5 of the English document Book 51.

DR. SIEMERS: Your Honors, this document is the so-called "Fall Gruch." These are Hitler's military plans in regard to Czechoslovakia. The document was submitted by the Prosecution and it is asserted by the Prosecution that the defendants knew this document.

Before asking the witness, I want to state that I made a motion to strike this document from the record --

MR. SPROCHER: Mr. President, any motion to strike a document I don't think is any proper part of the examination of a witness that has just been called in by the Defense, particularly since the witness so far has given no testimony. That's point one. Point two: To again have a repetition of Dr. Stenvers telling the witness something about the Prosecution's theory. For example, that each of these defendants knew about this specific document.

I would like to ask the Tribunal, particularly in the interests of clarification and saving time, to clarify the duty and responsibility of Defense counsel in that connection, and then the Prosecution won't feel obliged to interrupt the otherwise very good presentation of Dr. Stenvers.

THE PRESIDENT: Well now, gentlemen, we cannot read your minds or anticipate what counsel for the Defense was about to say. This Tribunal has observed many times that it is not proper to ask leading questions on examination-in-chief, or to suggest to a witness on the stand what his answer should be. We do not assume that Dr. Stenvers has intended to offend in that direction or that he will.

The witness is intelligent; counsel for the Defense is competent. If you gentlemen will try to confine yourselves to the fields that have already been made clear by the Tribunal, I think we will get along.

You may proceed, Dr. Stenvers.

DR. STENVERS: Mr. President, I hope that the record will show that Mr. Sprocher was not correct when he said that I had put any leading question to the witness. I mentioned the expression "Fall 'tween," and also "military plans." That is merely in order to show what this document is all about. I believe it is somewhat difficult to understand things if I only speak about numbers. If, for instance, I only say this is 388-PS. If, however, that is desired, then in the future I shall only give numbers.

THE PRESIDENT: No; the Tribunal will not go so far as to say that you may not, in a general way, call the attention of the Tribunal to the character of the document you are about to interrogate the witness concerned. You may do so; you have not offended yet, and we do not anticipate that you intend to.

DR. SEYMERS: May I say, Mr. President, that Mr. Sprecher has misinterpreted my thoughts. I do not know the procedure under American law. I wanted to put a question whether I should ask this witness about this document or whether it may be more correct to make the motion that I intended to make for striking this document from the record. So as not to make a mistake I wanted to ask the Tribunal to give me a clarification about this.

THE PRESIDENT: Now, gentlemen, there is nothing whatever before this Tribunal at this time. The observations of the Prosecutor were perhaps anticipatory more than anything else. We have already made clear our own conception about the function of counsel in interrogating a witness: not to lead or to suggest what the answer should be. We have said that it is not improper for counsel to direct the Court's attention to the character of the document about which he intends to ask the witness. Nothing could be accomplished by carrying on this conversation further, and if Dr. Seyers will just ask his question and counsel for the Prosecution desires to object, we will undertake to rule on it.

BY DR. SEYMERS:

Q. Mr. Schlotterer—

THE PRESIDENT: Counsel, you may tell us what you started to say about a motion. We were not clear as to whether or not you have a pending motion to strike this document or whether or not the Tribunal has ruled on a motion that you previously made to strike the document from the evidence. What is your understanding of the record in that regard?

DR. SEYMERS: I want to explain, your Honors. The document has been submitted in the session of the 21st of October, 1947. According to the record, on page 2,245, my associate, Dr. von Miller, objected

against the submission of this document.

Before talking about the reasons I want to point out that the Tribunal has stated that because of the extent of this document that they could not see what it was all about, that they would have to give an opportunity to the Prosecution to prove that the Defendants know that document. And, furthermore, the Tribunal added that after the conclusion of the case of the Prosecution the right would be reserved for the Defense to make the motion to strike this document from the record.

I intended to make this motion now. Since the document is lengthy and would cause a delay if this and further witnesses would be asked about this document in detail, that was the reason why I wanted to make the motion for striking it today, although I know I can make this motion at a later time. I want to avoid giving the reasons for my motion in the presence of my witness because Mr. Sprecher would then say afterwards that the witness had been prejudiced or led along by me through my leading questions. That was the reason I want to ask whether it was proper for me to ask first in the briefest way possible and then should make the motion to strike the document from the record.

THE PRESIDENT: I think we understand the situation. This document, as far as the English translation is concerned, comprises about 93 or 94 pages. I can well understand that if it does remain in evidence that it might become important for counsel to examine this witness or perhaps other witnesses in regard to it. For that reason it would be proper at this time, the Tribunal feels, to hear what you have to say now, as briefly as you fairly can present it, as to your views why the document should be stricken from the evidence. As to whether counsel for the Prosecution feels that the witness should or should not be present, it can speak for itself.

The Tribunal will not excuse the witness unless there is a request that the witness be excused. If the Prosecution desires that the witness step aside and out of the court room until this motion is passed

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on, that request will be granted. It is your desire in that regard,
Mr. Sprecher?

MR. SPRECHER: Mr. President, there has been a great deal of confusion as to what I intended.

THE PRESIDENT: Please, let's don't go back over that. Let's start from here on now and no improper motive is ascribed to the prosecutor certainly. He should be prompt and on his feet when he thinks something is about to occur that is a proper basis of an objection and you are not being criticized for that.

MR. SPRECHER: I do not ask that this witness be excluded now, but it seems to me that normal legal business --

THE PRESIDENT: Now, let's just confine this situation to now and what is now before us.

MR. SPRECHER: In this instance and in this one instance we will not make the objection.

THE PRESIDENT: Very well. Then, Mr. Witness, you may sit at ease. Dr. Siemers, you may state the basis of your objection why this document should be stricken from the evidence.

DR. SIEMERS: Your Honor, this document entitled "Fall Gruen" as one which was of basic importance in the great case before the I.M.T. It was there submitted to prove that military circles had aggressive intentions together with Hitler. Therefore only the military aspects of this document have been mentioned. My associate, Dr. Von Koller, pointed out already on 21 October, that the prosecutor, when submitting this document, said that this document showed that Farben was active in the field of aggressive war -- that is to say they made preparations for aggressive war, and he used the expression activities in this connection. As a matter of fact, however, not the least connection exists between this document and the defendants. The English document book does not contain everything. As far as I know it comprises 94 pages. In the German document book it is 162 pages long. There is not a single name of the defendants contained in this document.

THE PRESIDENT: Is there any mention of Farben in the document, as you recall, Doctor?

Dr. SILENS: Mr. President, in my opinion Farben is not mentioned.

The only thing mentioned, and which was stated by the prosecution, is Losantin. And because the word Losantin was used by the military which had to be produced chemically, it is believed that something can be concluded from that word. There is no distribution list which mentions the name of one of the defendants, let alone the name of any German private industrialist. It is an extremely secret document. As far as I know, industry not only did not know anything about the plans but they did not even know the Fall Green, Case Green. These are things that we learned about only during the I.M.T. trials. But since doubtlessly the document can be incriminating in various respects, it seems of extreme importance to me that I should know for the further conduct of my case whether I must bring more proof to disprove this document and to show that no knowledge of it was had by any of the defendants. I may say that the prosecution itself stated on 21 October, "We do not want to prove actual participation in these important conferences." The prosecution did say, however, "We can prove that the defendants knew of this document." In further records that I read I was always waiting eagerly for this proof. I was not able to find this proof apart from a few indications. For instance, the indication that some military circles wanted to increase Losantin production. That is all. Nothing was presented to prove that actually one of the defendants or my client knew of this document. It was merely stated generally that the defendants received certain letters and wrote certain letters regarding Czechoslovakia at the same time which are things that can be explained very easily, but which do not permit one to conclude that they had knowledge about this document. This is of course a question for argumentation. But if the Ministry of Economics asks questions about Czechoslovakia and if those questions are answered by industry, under a date which was the same date as when negotiations about the Sudetenland were conducted, then one can not conclude from that that the defendants knew of this military document. I believe it would extremely facilitate and expedite the

further proceedings if clarity about this point could be achieved. I tried to state my points as far as possible according to the record. I merely found some indications that certain documents were submitted to Forben with dates that were the same as the negotiations about Czechoslovakia and dates that are shortly before the Munich Agreement and that is what the prosecution wants to conclude its assertion from. If that is possible then the prosecution can introduce all documents in this trial also which were produced during the Y.M.T. trial as the so-called key documents. To find letters about Austria which were dated at the time when the Anschluss question was acute is very easy. To find letters about other foreign states and to want to conclude from that that one know of Hitler's documents about Poland is very easy also. And that is the reason why I consider this matter so important. The danger that the prosecution wants to hold the point of view that since you wrote about Czechoslovakia you must have known about Hitler's plans--since you wrote about Poland you must have known about Hitler's plans--that is a tendency which is impossible according to the evaluation of evidence in the I.M.T. And this is what I found my objection on. The I.M.T. stated that a knowledge of aggressive plans could only be accepted as proven if one knew the decisive key documents, because that meant knowledge of Hitler's warlike intentions and plans. A question about which I must argue about at a later time and in which case the prosecution would have to prove that the defendants knew of these key documents. This evidence can not be found in the record of 21 October and during the later records this document is never mentioned again. This is a question of principle. Therefore I ask the Tribunal to strike this document, or that the prosecution should admit that none of the defendants participated in these conferences and since they can not prove that anyone of the defendants is mentioned in any of the distribution lists.

THE PRESIDENT: The burden, of course, is on the prosecution to show the competency of the document. And since the record indicates that counsel for the defense reserved the right to make an objection and

the Tribunal postponed ruling at the time because of the length of the document, counsel for the defense is certainly within his rights in raising the question now, since it might very substantially affect the evidence that the defense would wish to offer. Since the burden is on the prosecution to justify its offer we would be glad to hear what the prosecution has to say about the relevancy of the document.

THE CHAIRMAN: Mr. President, the question in our view runs very deep and it's raised without any advance notice. But yet if I may suggest this to your honors, I think the question is almost academic. It seems to me that we must assume that Dr. Klenner has read both the defense motion with respect to the inadmissibility of Counts I and V as well as the prosecution's answer thereto, in which this general question, which Dr. Klenner very explicitly asks clear, was the basis of his present motion, is raised in that motion and in the prosecution's answer thereto. Now, why is this academic? I think your honors might as well ask what parts of the I.M.T. decision is at issue. Your honors, by taking judicial notice and in fact are required to take judicial notice, of certain findings in that decision. That decision (Article 10) goes on in those very words — Bill Gram — and it discusses the significance of the whole Czechoslovakian complex including the much better and those who as early as 1938 Germany had no intention of living up to which and that the war against Czechoslovakia had been laid down with quite certain in mind.

Therefore, what the military was doing between the time of Exhibit 1041 and which and what Farber did in the Sudetenland and what later happened in the taking of Bohemia and Moravia in March 1939 was said before was important to your Honors in measuring the conduct of these defendants in connection with the charges in this case.

We thought that it was essential that you note some of the staging of operations in this document and compare them with the activities of these defendants.

Now, the problem of trying to indicate why this particular document at this time should be continued as part of this record is not easy. Defense counsel has simplified it to some extent by mentioning, Iosantin because this document, among other things does mention Iosantin and you will recall from the Farber document, that during this crucial time, there was a tremendous and incredible increase by OKW of Iosantin tablets as if something were about to burst loose which might involve decentration agents in a gas war. That is one small point.

I might also call your Honors attention to Exhibit 563 which is Document No. T-4717, in which the defendant ter Meer, in writing to one of Dr. Schlosterer's associates in the Ministry of Economics, Secretary Winkler, on the 11th of October 1938, is talking about East Berlin III, mentions the fact that:

"Due to the great stress put on military considerations, it has been proposed to locate the new June plant in Fuerstenberg which location is satisfactory from several points of view."

And then Dr. ter Meer pointed out that the prior area had been a troop concentration point for some time until the solving of the so-called Czech issue and that objection, of course, was no longer valid.

Now that is at random another document which shows a further connection between "Fall Green" and the activities of these defendants.

THE PROSECUTOR: Do you recall any evidence, Mr. Prosecutor, that brings to the knowledge of any defendant on trial anything concerning this document that was offered subsequent to the offer of the document?

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MR. CHAIRMAN: Well, I can't recall individual documents but I should say that something like 100 documents were offered which I would say had some such connection; that is to say, this is an important document in the whole system of overruling, your Honor. It is one important stage along the way.

MR. CHAIRMAN: Well, it takes something more, as the Chair views the situation, than the overall importance of the document. We have reached the stage in the trial of this case where it would seem to be proper to inquire into whether or not there is either direct or indirect evidence or evidence from which an inference could be legitimately be drawn that would bring this document to the knowledge of at least one defendant on trial before it could be competent.

MR. CHAIRMAN: Well, Mr. President, I think you have misunderstood us and I want to point out that I think Dr. Eisele misunderstood us. We have never said that these defendants had that type of job to do in Nazi Germany, so that they should either have been present at the conference when that decision was determined by Hitler and a close small group of military advisors or when the strategy and the timing of the particular military movement was finally decided by those war criminals who had that timing job to do. We have never claimed that these men were the military strategists of Germany, but that they did as individual defendants in preparing Germany for war marched step by step along with a number of the things which are called out in black and white in "Wolf Green."

Now our purpose has nothing to do with what Dr. Eisele has suggested nor, indeed, to connect this document up with these defendants by showing that they were on the distribution list or that this particular document was circulated to any one of them in any other capacity, to show he had knowledge of each point in this document.

MR. CHAIRMAN: Let's not say "each point," let's inquire as to whether he had knowledge as to any point in the document. Is it inferable from the evidence that you have offered that any of the

defendants had actual or implied knowledge of the document or of any of the events or circumstances disclosed by the document?

MR. SPRECHER: Yes.

THE PRESIDENT: Now, what is that.

MR. SPRECHER: Now, then this document indicates that Czechoslovakia was to be overrun at one time or another and that in connection with this overrunning of Czechoslovakia and its absorption certain steps would have to be accomplished. We say that as far as those gentlemen who made this particular plan as revealed in Fall Gruen did plan correctly large numbers of these steps were accomplished by the Third Reich, and, as the IMT said, a lot of people had to cooperate to see that that was done.

We would like to have your Honors lay, beside Fall Gruen, beside the IMT decision, and beside a number of other documents in this case, all of which are related, the conduct of these defendants and then have you draw a decision as to whether or not they (1) participated and (2) whether or not they had the adequate knowledge.

Now, we have written a whole brief on that subject and it seems to me that in effect this motion is an attempt to require the Tribunal to rule on the question of the motion and the brief before I had thought you were willing to rule on it, Mr. President.

JUDGE HERBERT: Mr. Sprecher, as a practical matter is there really anything in this exhibit the purpose of which you have in mind which would not be served by taking judicial notice of the provisions, of that portion of the judgment of IMT to which you refer? In other words, counsel for defense has indicated that there is much detail in this lengthy exhibit, that they will desire to question on many of the details of the exhibit. Now just scanning through it, it seems to me that Fall Gruen was discussed by the IMT on about a page and a half and the essential details and the significance in connection therewith was set out in that judgment.

Now, I think we are entitled to take judicial notice of the judgment of the I.T. Therefore, just as a practical matter, why wouldn't it serve the same purpose to have this document out of the record to eliminate the practical difficulties referred to?

THE COURT: Well, Judge Robert, you are asking us a question which I feel somewhat inadequate to answer on short notice. I think when any motion reaches so basically the point of many of the issues in this case it is one of those places which cause the Tribunal to require that motion be put in writing. In other words, I think this motion goes a lot further than what appears on the face of it. I had no notice of this in advance. I don't even have the document in the room at the present time. It could well be that by hindsight as the prosecution views the matter now the findings of the I.T. concerning the whole Czechoslovakian complex would be adequate but we did feel that the basic document Fall Gruen itself would be helpful to your Honors in measuring the conduct of these defendants and weighing the events of these cases and it was for that reason at the time after deliberation that we submitted it to you.

Now, if this basic matter is to be passed upon in this way without a written motion and without prior notice to us --

THE PROSECUTOR: We have never required the filing of a written objection to the offer of a document in evidence and, as counsel for the defense has quoted the record, a reservation was made which the Tribunal was willing to permit because of the length of the document at the time.

Now, if that is correct, then counsel for defense is within his rights at any time to renew that objection and now would seem to be a very appropriate time to pass on it because there is a witness on the stand which defense counsel has indicated he desires to interrogate. If this document remains in the evidence. It is a sizable document and is important from the standpoint of the Tribunal because if this is

to be the proper subject of an evidentiary showing on behalf of the defense it may take a considerable time to hear the defense with respect to this document.

Now, it seems to me that as to the events that may be deemed more or less historical now, as to the aggressive objective with reference to Czechoslovakia, as to the existence of a plan of certain military and political leaders to accomplish that, as to the timing of it and the circumstances under which it occurred, this Tribunal does not need to waste any time on that; and, as Judge Robert has suggested, after all, the I.T. judgment, if it is as full as has been indicated, would seem to answer the question, which brings us back to the big question with which this Tribunal is concerned and that is whether or not any of these defendants had knowledge or participated directly or indirectly in the conception of that plan or in the execution of that with appreciation of the significance of their actions. That is the ultimate that this Tribunal is called upon to try.

Now, if we can reduce that inquiry down to a basis of what has been determined by judicial determination on the part of the I.T. rather than to go into all the details of this very lengthy document, the Tribunal should do it and is much concerned in saving our time to avoid that problem.

DR. SMITH: Your Honors, may I reply to Dr. Sprueher's statement as briefly as possible? The comparison between this document and excerpts from the I.T. judgment seems not practical to me. The I.T. judgment furnishes bases and principles to be applied in this trial. In that case the knowledge of the defendants is not concerned but in this document the knowledge is concerned.

Dr. Sprueher says that it has already been planned at an early stage not to observe the Munich agreement and he further states that the defendants knew this and that they participated in this non-observance. I admire this conclusion and deduction but it is only a deduction and

to be the proper subject of an evidentiary showing on behalf of the defense it may take a considerable time to hear the defense with respect to this document.

Now, it seems to me that as to the events that may be deemed more or less historical now, as to the aggressive objective with reference to Czechoslovakia, as to the existence of a plan of certain military and political leaders to accomplish that, as to the timing of it and the circumstances under which it occurred, this Tribunal does not need to waste any time on that; and, as Judge Robert has suggested, after all, the I.T. judgment, if it is as full as has been indicated, would soon to answer the question, which brings us back to the big question with which this Tribunal is concerned and that is whether or not any of these defendants had knowledge or participated directly or indirectly in the conception of that plan or in the execution of that with appreciation of the significance of their actions. That is the ultimate that this Tribunal is called upon to try.

Now, if we can reduce that inquiry down to a basis of what has been determined by judicial determination on the part of the I.T. rather than to go into all the details of this very lengthy document, the Tribunal should do it and is much concerned in saving our time to avoid that problem.

MR. SIMERS: Your Honors, may I reply to Mr. Sprecher's statement as briefly as possible? The comparison between this document and excerpts from the I.T. judgment seems not practical to me. The I.T. judgment furnishes bases and principles to be applied in this trial. In that case the knowledge of the defendants is not concerned but in this document the knowledge is concerned.

Mr. Sprecher says that it has already been planned at an early stage not to observe the Spanish agreement and he further states that the defendants knew this and that they participated in this non-observance. I admire this combination and deduction but it is only a deduction and

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a combination. Somewhere we must be given a fact from which this is to be proved.

Apart from the dates that I have already mentioned, I have found in the record where the proof was to be furnished, merely an indication on two separate occasions about Losantin. Losantin was really a probative agent for enemy attack. That is not a proof for aggressive war. But, Your Honors, how is it actual in practice. If a general states that an aggressive war is to be waged after he had discussions with Hitler and if he is then given the mission to give certain Wehrmacht orders to industry and if he then puts down in the document that for that purpose Losantin production must be increased, then, I ask Mr. Sprecher, does this General then inform industry when he gives the order, "We need that for our war"? That is not proof at all. The next point, Exhibit 563, which is a letter of Ter Meer to Brinkmann dated 11 October 1938. That is 11 days after the Munich agreement. Ter Meer points out quite correctly to the fact that the site on which the Buna Plant is to be constructed was a troop concentration area a fortnight ago, is that the proper place for a factory. Your Honors, if Ter Meer had known the further plans, then he wouldn't have had to ask. He asks and he pointed out facts which in the past everyone knew all over the world. He doesn't say in this document that that might lead one to conclude that he knew things that were not accessible to anyone from the newspapers. I do not believe that Mr. Sprecher is correct that he can bring a hundred documents to prove knowledge, but the most difficulty seems to be the following two points. Mr. Sprecher just now argues once more that Hitler intended to overrun Czechoslovakia. Simultaneously, there were certain economic steps taken by Farben, and that is to a proof. Your Honors, if such proof leads to conviction, then I believe it is useless to be a defense counsel. Because I cannot follow such trains of thought. One must show above and beyond that during those simultaneous economic steps which were only information given to the Ministry of Economics, something definite was known. It is not enough that the Ministry of Economics inquires with Farben. The most serious point, why I bring it up today,-- I do this in order not to encumber this procedure unnecessarily. If the

prosecution actually is to have proved that the defendants know of this document then I must bring counter evidence that the defendants did not know of its existence. Your Honors, that means that I have to ask those high ranking officers who are still alive and who knew Fall Gruen to be witness and that I need all those gentlemen in the economics who might have known something, as witnesses and that I must bring them here as witnesses to ask them, "Did you inform my client about this point, about this document?" It was a military secret quite apart from the fact that the officer was not permitted to disclose the information. I have only that possibility. I fear that would prolong the trial very much.

PRESIDENT: Gentlemen, we are certainly willing to hear you at reasonable lengths, but let's please try to keep within the framework of the recognized procedure. It is the objection of Dr. Siemers. He is entitled to the opening and the closing. The prosecution comes in between. We will now hear the prosecution and permit Dr. Siemers to conclude the argument, and then meet the situation as best we can. Go ahead, Mr. Sprecher.

MR. SPRECHER: Mr. President, in the meantime we have been able to have brought into the court room the transcript to which Dr. Siemers referred. Now, I won't go into what I think was the misstatements as to what we said at the time. I think that would be wasting time. But at that time, Your Honors said that on the state of the record at that time you couldn't be certain whether or not this was competent proof or not, "In other words, to pass on that we would have to take time out from the trial of this case, familiarize ourselves of the contents of this document, and then we would also be in a situation where the evidence as indicated by the prosecution might connect up one or more of the defendants." Now, we think we have brought in a lot of documents. I mentioned off-hand perhaps a hundred. I won't mention that with respect to Dr. Siemers' interpretation of the document already mentioned I have complete disagreement. Your Honors have to decide that point. I can only mention another

document, for instance, Frank Fehle's statement about what Ferben was going to do in the Sudetenland, and this was just during the time in question with respect to the Jews and what Ferben was going to do to train people for later use in Czechoslovakia. Apart from the Sudetenland. And I think I could with a little time mention a lot of other documents which I suppose Your Honors would be interested in measuring. As you stated, you would measure them at the time you ruled on the admissibility of this document, because Mr. Anchan had just stated before you made that rule that the prosecution had to some extent and in the future was going to offer documents which would show a close relationship with respect to many things shown in "Fall Gruen", and the conduct of these defendants.

PRESIDENT: It is now 10 minutes after 4. The Tribunal will be in recess for 10 minutes and will be back on the bench before the regular time of recess.

DR. SIEGERS: Mr. President, may I add one remark—may I only add one remark?

PRESIDENT: Yes.

DR. SIEGERS: The difficulty of presenting such documents lies not only in the perhaps superfluous examination of witnesses, but also in the encumbrance of bringing counter evidence. To give you an example, I would have —

PRESIDENT: Well, please, we have your views on that subject, and I may say this is a subject which is not novel to the Tribunal. We have had some concern with it before.

(A recess was taken).

(AFTER RECESS)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Tribunal feels that it is fully advised as to the theories upon which counsel for the Defense and counsel for the Prosecution stand, with respect to this document.

We feel also that we are advised sufficiently with references to the state of this record, to pass upon this motion without further delay.

The motion of the Defense is sustained, and document 388 FS which was marked as the Prosecution's Exhibit 1041, is now stricken from the evidence in this case.

DIRECT EXAMINATION (Resumed)

Dr. GUSTAV SCHLOTTERER

BY DR. SIEMERS:

Q. Dr. Schlotterer, from Book 51, I would like to put a document before you which is on page 116 of the English Document Book, and on page 118 of the German.

This is Exhibit No. 1044, Document NI 3721. From this Document you can see, Dr. Schlotterer, that in connection with the Czechoslovakian affair, two gentlemen from Farben were suggested as Trustees with the approval of the Reich Ministry of Economics.

And now please turn to the next Document which is Exhibit 1045 a letter from Dr. von Schnitzler directed to a few gentlemen from Farben where it is said that the Reich Ministry of Economics and State Secretary Keppler have been consulted; that a trusteeship administration should be utilized for certain plants in Czechoslovakia. First of all, a preliminary question. Do you know anything about the details?

A. No, I did not work on this matter. It was an affair of the Chemicals Department of our Ministry.

Q. May I point out, Dr. Schlotterer that in this Exhibit No. 1045, the following sentence can be read:

"This program was accepted by both the Ministry of Economics and the

Foreign Organization of the Party, for which Mr. Schlotterer himself (from the Reich Ministry of Economics) could take a stand, and they were all in agreement with it."

Please explain to me how this sentence is to be understood, if you were not an expert in the Reich Ministry of Economics.

A. I was not an expert in this Ministry, but our Department was, of course, interested in these events, and therefore, participated in this case. I remember that the gentlemen from Farben approached me at the time and informed me by referring to a conversation with State Secretary Keppler, and that they said to me that they had suggested if the Sudetenland German region was annexed to Germany, that Commissioners be instituted in two plants of the Aussig Verein, in Czechoslovakia. The gentlemen asked me for my approval of this suggestion, and I promised my approval.

The gentlemen then said that perhaps a contradiction against this Farben plan might be expected from the foreign organization. That question was asked because previously in a few cases Farben had had serious difficulties and differences of opinion with the A.O., foreign organization that was arbitrated by me, -- at least I tried to arbitrate in these cases.

I answered these gentlemen at the time that I did not believe that the foreign organization would intervene actively in this case also, and I said that if that was done, I offered my services to set these things aright. That is the incident described by this sentence.

Q. I do not want to pursue this matter any further because the question of the foreign organization has been clarified already. As an official you had nothing to do with the foreign organization?

A. No.

Q. May I request you, in connection with this subject, to tell me, do you know from your end of the affairs, from the Reich Ministry of Economics, of any example about differences that arose, that you have just mentioned?

26 January 48-A-SW-24-3-Ils Stewart (Katz)
Court 6, Case 6

A. Yes, there were the Farben agencies in the Southeastern part of Europe which were directed by a Mr. Roth, who was a Jew. The foreign organization asked for the dismissal of Mr. Roth. Farben refused and they were supported by us in their refusal. As time went on the pressure of the political agencies became so strong that Farben had to give in. They then gave Mr. Roth a very honorable compensation and they made possible for him a living in Switzerland. That is one of the differences that I can remember.

THE PRESIDENT: Counsel, it is the hour of adjournment, and we will suspend at this time.

The Tribunal will be in recess until 9:30 tomorrow morning.

(Tribunal in recess until 0930 hours Tuesday Morning, January 27 1946)

Official Transcript of Military Tribunal VI
in the matter of the United States of America
against Carl Krauch, et al, sitting at
Nurnberg, Germany, 27 January 1948, 0930,
Justice Curtis G. Shake, presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI. God save the United States of America and this Honorable Tribunal. There will be order in the Court.

THE PRESIDENT: You may report as to the defendants Mr. Marshal.

THE MARSHAL: May it please Your Honor, the defendants Haefliger and Schneider are absent from the Court Room.

THE PRESIDENT: The defendants Haefliger and Schneider have been excused from attendance today on their own applications. Are there any preliminary announcements from the defense?

DR. ASCHENAUER: (Counsel for Gattineau): May I take up a very brief moment of your time, Your Honors, with reference to my motion of 7 January 1948 and by pointing out the irrelevancy and inconclusiveness of the material presented by the prosecution against Dr. Gattineau, I may ask the Tribunal already now for a decision on my motion of 7 January 1948 which I made in writing. This motion says that the Tribunal should declare the evidence presented as insufficient to substantiate the charges brought against the defendant Gattineau and thus acquit the defendant Gattineau now already from guilt and to release him from imprisonment before the trial is conducted any further. For the reasons I may call your attention to the very detailed explanations in my motion of January 1948. May I also state that the prosecution replied on 14 January 1948 but that that reply does not bring anything new. As a result, I again replied in my brief of 23 January 1948.

THE PRESIDENT: The Tribunal wishes to assure counsel that we have not overlooked or forgotten his pending motion. We realize also that counsel is entitled to some consideration in having his motion passed upon. However, in that same connection we would remind counsel that there is also pending a motion on behalf of each and all the defendants, particularly with reference to Counts I and V and a part of Count II

of the indictment. The Tribunal has already made its position clear with respect to that motion and that is that it would be placing the Tribunal in an unfortunate situation to ask it to pass upon any motion involving the sufficiency of evidence of the prosecution until the evidence of the prosecution is closed. What we have reference to is the fact that according to our records there are yet some seventeen witnesses for the prosecution who have not been cross-examined by counsel for the defense. We said early in this trial that the order in which the parties, plaintiff and defendants, presented their evidence was largely a matter in the discretion of counsel. The prosecution saw fit, to illustrate, to follow on the formula of the indictment, to offer its evidence by counts; the defense is offering its by individual defendants, both of which procedures are entirely proper and within the control of counsel — at least to the extent that the Tribunal would be most reluctant to offer a suggestion in that regard. We also said that when counsel for the prosecution offered an affidavit it might supplement the affidavit by offering oral testimony. And until the evidence, as it relates to these affidavits, is finally closed, and the prosecution's case is finally concluded, the Tribunal does not wish to find itself in the unfortunate position of having passed upon the sufficiency of evidence and then having some additional evidence come in that might directly or indirectly bear upon the things which we have considered. That is the reason why we have, from time to time, postponed ruling on your motion and on the other motions to which I just referred. We are most anxious to conclude this cross-examination of these witnesses and just in a moment, after we have heard you, we shall have something further to say along that line. We do hope to have this record in shape at a very early date where the Tribunal will feel that with proper regard to its obligations, it may rule upon your motion and the other motion and yet a third motion of the same character that is pending. In the meantime, it is asking too much of the Tribunal to pass upon the sufficiency of the evidence of the prosecution until

the book is closed on the prosecution's evidence. Are there any other announcements or observations to be offered on behalf of defense at this time?

MR. BERNST: Mr. President, we heard yesterday that after the defendant Geheimrat Schmitz, the defendant Dr. Von Schnitzler will not take the witness stand. During the session of 22 December 1947, the morning session, the Tribunal announced that if any affidavits by the defendants had been presented who are not going to take the witness stand, and who, for that reason, will not be cross-examined by their co-defendants, in such a case the Tribunal shall set down on the record after a proper motion has been made that this particular affidavit can not be regarded as evidence against other defendants who are incriminated by it. In a large number of affidavits the defendant Von Schnitzler made statements and particularly has done so in six decisive ones, which incriminate other defendants. On my own behalf and on behalf of other defense counsel I hereby make the motion that the Tribunal should rule, since the defendant Von Schnitzler is not going to take the stand, that these affidavits shall not be used as evidence against any of the other co-defendants. I make this motion already now because I believe that if we have such a ruling from the Tribunal it would expedite the proceedings, and, to wit, because we would then not be obligated to deal with this affidavit to the extent in which we would otherwise have to do so.

THE PRESIDENT: Counsel is correct, I think, in his understanding of the ruling that the Tribunal heretofore made to the effect that an affidavit or affidavits of a defendant who does not elect to take the witness stand may be considered in the nature of admissions against that defendant, but since he is not subject to examination by co-defendants, such affidavits would not be evidence against co-defendants. We have indicated that. Now as I said to counsel just a moment ago, the presentation of the defense case is in the hands of the defendants. We are not going to anticipate what defendants may or may not take the

during the course of the morning so that I can begin to present my evidence either now or in the afternoon all in one.

JUDGE MERRELL: Dr. Dix, I have already contacted the proper parties and they have assured me that Book Number 2 for defendant Schmitz will be delivered today.

DR. DIX: May I add that that was told to me also, but they said that it would be this evening, but I shall have to begin either this morning or this afternoon. Apparently it has been translated but it's a question of mimeographing and binding the book together.

JUDGE MERRELL: I will be glad to check at recess to see whether it will be available or what time today it will be available.

DR. DIX: Thank you.

THE PRESIDENT: Perhaps the Tribunal ought to offer one further observation concerning the matter of the cross-examination of defendants. I said that we had no control over whether or not a defendant did or did not testify and that one who had announced an intention not to testify might subsequently change his mind and testify. I should have gone further, perhaps, and have

said that in that event, and a defendant does subsequently does change his mind and takes the witness stand even though it would be out of order, we would, of course, indulge the right of every defendant to cross-examine him as to anything that would be incriminating or thought to be incriminating against another defendant. In the meantime, until a defendant who has announced that he will not testify or whom you have good reason to believe is not going to testify because of information that you have, you may not be disturbed or concerned about waiving any right of cross-examination. If that situation is changed, your right to cross-examine will be protected. Has the prosecution anything to say?

MR. SPRECHER: Mr. President, our remarks may be premature because we understood you to say that you had some announcement concerning the outstanding affiants. So I leave it respectfully up to you, Mr. President, as to who should speak first.

THE PRESIDENT: I think we should rather hear you speak on that subject than to talk about it ourselves, so we will listen to you.

MR. SPRECHER: I know it is a burden to all of us to reflect upon the fact that the Tribunal has some grave problems before it in connection with these affiants. We have a statement which we think will somewhat reduce the magnitude of the problem before your Honors and which we think will be something of a credit to our attempt constantly to expedite the trial. In the last several days and over the week end, since your Honors said that you were about to come to a final decision about this matter, we have reviewed the status of the prosecution's evidence and also certain means which we have at our disposal which we think could and do remove the necessity of keeping in the record six of the affidavits by six of the affiants still outstanding. Now, we have no intention to discuss the question of the legal rights involved or the reasonableness and the propriety of the various steps which have been recommended and contested. Nor do we want to describe the energy or even the ingenuity which we have exercised to bring here more than half a hundred affiants

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from all over Europe when we have felt that in many cases cross inter-rogatories would have more than sufficed. But the position with respect to those matters has been crystallized and since we do feel by this review of the evidence that we have recently made we are in a position to withdraw six further affidavits, we shall proceed to do so at this time with your consent.

THE PRESIDENT: We will be very glad to entertain that motion.

MR. SPRECHER: Mr. President, I would like to state that this is the last withdrawal of any kind, shape, or nature unless some circumstances arise over which we have no control or if we obtain information which we do not have at the present time which would make it only reasonable for us to reverse our position. Now, we move to withdraw Exhibit 1349, Document NI 11410, the affidavit of William Allen, who is from England. We move to withdraw Exhibit 1763, NI 11710, the affidavit of Dr. Nyiszli Mikolae, of Roumania. We move to withdraw Exhibit 1162, NI 6739, the affidavit of Franciszek Kacprzak, of Poland. We move to withdraw Exhibit 1121, NI 11624, the affidavit of Franz Klecksa of Poland. We move to withdraw Exhibit 1122, NI 11622, the affidavit of Josef Herynk of Czechoslovakia. We move to withdraw Exhibit 1454, NI 9818, the affidavit of Josef Jakubik, who when last heard of, was in a D.P. camp in the British Zone of Germany.

THE PRESIDENT: Does that constitute the six?

MR. SPRECHER: Yes sir.

THE PRESIDENT: Thank you, Mr. Prosecutor, and that motion will be sustained and the affidavits described in the motion of the prosecution just made are now stricken from the evidence in this case and are not the subject of any further concern.

MR. SPRECHER: In that connection, Mr. President, that leaves eight outstanding cases, if we leave apart the three cases where your Honors directed that the commission proceed to Vienna and Landsberg Prison.

THE PRESIDENT: I am sorry -- I think I only make seven. There is one in America, one in Belgium -- are you following me in your order there?

MR. SPRECHER: Mr. President, I think I know the misunderstanding and may I come to it in a minute. We omitted one name from your address list who is on the commissioner's list and that is Dr. Bendell of Paris.

THE PRESIDENT: Very well.

MR. SPRECHER: May I continue. I wanted to talk about some possibilities for joint action with respect to some of these eight cases or at least make our position clear and then have your Honors indicate further desires. Now, by affidavit I stated for the prosecution that we had no assurance after using the regular and official channels, to bring in the affiants who were still outstanding some ten days ago. Now, it's always possible that by some type of further emergency measure which goes far beyond the official channels, in particular cases a particular affiant might be able to be brought here. For example, in some cases we have taken our personal transportation in order to go to places in foreign countries and bring here particular affiants where particular defense counsel had indicated particularly good ground for wanting to cross-examine a particular witness openly before the entire Tribunal, in the early stages of this case. There are possibly some such emergency measures which the Secretary General or which the ingenuity of defense counsel in some case might change that situation. We are prepared to review these cases with defense counsel, with the Secretary General, once again with the commissioner, or with the members of the Tribunal themselves. We can do it now or we can do it later. We have made our position in that regard clear before the commissioner. Dr. Mueller was informed that we would be glad to take any particular case and inform him of the details of our attempts. That remains outstanding as an offer. We want most of all here that you should be satisfied that we have not only attempted to do what seemed to be just and fair but that we have attempted, with great energy, to satisfy particularly defense counsel, even though we have most decidedly thought the shoe was on the other foot.

THE PRESIDENT: Well, it is not unusual in the trial of law suits for parties to feel that the shoe is on the other foot -- we realize that. But be that as it may, I am going to take the liberty of withholding the remarks that I intended to make on this subject with this substitution. In the light of what the prosecution has just done of withdrawing six of these affidavits, it would appear to be proper to ask counsel for the defense to again make a survey of the situation and advise us as speedily as possible if they can offer any further suggestion that will shorten this list.

I may say to counsel, and particularly to the Prosecution, that for whatever it may be worth this Tribunal is willing to exert its pressure and influence upon administrative agencies and upon military authorities to help us to bring these witnesses here. We are going to do everything that we can to bring them in the hope that we can further reduce this list of outstanding witnesses to be cross-examined.

Now, I would just like to say in that regard that we would feel somewhat embarrassed if we went to that extent of asking the Secretary General and military authorities to cooperate with us, as a Tribunal, to bring witnesses here and then when we read the transcript of the evidence it would all look as though it had not been worthwhile. I don't anticipate that that may happen, but it could happen.

So will you please again review your lists and, if you can, reduce the outstanding witnesses, one or more? It would be very helpful in that regard. If you can't, we shall put all the pressure that we possess to produce the witnesses here for examination before the Commission or at some other convenient place so that you shall have the benefit of your cross-examination. We will review this situation in chambers and take it up at some other time before too long because we are most anxious to conclude this chapter in the history of this trial.

Have you something to say, counsel?

DR. BILCHER: Mr. President, I don't want to make a statement in regard to the last treated chapter, but I should like to be permitted to revert once more to the question of the affidavits of co-defendants.

Mr. President, you said that if a defendant, contrary to his statement, should change his mind and take the witness stand at a later time, the remaining defendants and their counsel should have the full right to cross-examine. There are cases when affidavits of co-defendants are the sole evidence presented by the Prosecution in regard to definite points of certain defendants. If the defendant concerned does not take the stand and if the affidavit is then not taken into account, then no

proof has been offered at all by the Prosecution. It would then be superfluous to bring any counter-evidence.

I believe it would be in keeping with your Honors' intentions in those cases not to burden the record with any counter-evidence as to points for which there has been no proof brought by the Prosecution. It might happen, however, that if the defendants concerned should later take the stand and thus his affidavit is in evidence against the client, the Defense might consider it necessary to bring the counter-evidence in some other way than by way of cross-examination of that defendant, either by way of documents or by way of other witnesses, especially perhaps by calling the client agains once more to the witness stand.

I should be grateful to your Honors if you would let us know whether this full possibility of counter-evidence in such a case is still possible to us.

JUDGE EDWARDS: Counsel, the President of the Tribunal has suggested that I take a turn at the microphone for a moment in reply to the situation, or in clarification of it.

Where a defendant does not take the witness stand I think we are all clear that this Tribunal has laid down the definite rule: That the affidavits of that defendant are not to be considered in evidence against other defendants upon a proper, formal motion made before the end of the trial. And I think it is clear that, for example, where Dr. von Schnitzler has not seen fit to take the witness stand, other defendants may safely proceed upon the theory, the announced statement, of his counsel that he will not take the witness stand. But, nevertheless, something in the course of the trial may develop where the defendant von Schnitzler and his counsel thought it necessary that he ultimately go on the stand. We don't want to lay down the rule that once he has stated he wouldn't go on the stand that he can't later on defend himself if he deems that it is necessary.

On the other hand, if he does change his mind and he does, out of

order and with the consent of the Tribunal, take the stand in his defense, and thus giving all of the affidavits that he has made the status of evidence against all of the defendants or any of them, the situation of the defendants other than von Schnitzler will not be prejudiced by the chance in the anticipated plan.

That means that: First, the defendants may cross-examine him, and, secondly, the defendants or any of them may offer evidence in opposition to and in defense of any of the evidence thus made available against them through the testimony and the affidavits of the defendant who has ultimately taken the stand.

In other words, your defense is not prejudiced by the fact that you temporarily rely upon the statement that a defendant does not take the stand, and if he does take the stand, then he has opened up to you the opportunity to defend to the same extent that you would have had that opportunity in the first instance if he had taken the stand earlier in the trial.

Now, I have used a lot of words; I hope I have made that matter clear. And is that agreeable, Mr. President?

THE PRESIDENT: That is entirely correct. It occurred to me that what counsel was concerned in, whether or not in the event a defendant first indicated the desire not to take the stand and subsequently took the stand, whether or not then another defendant was just going to be limited to cross-examine him and would be precluded from bringing in evidence to meet the charges contained in the affidavit against the other defendant.

I think Judge Morris has made that perfectly clear, that your situation in that event would be just like it would be if he did take the stand, and took it in order, and testified. He would not only be entitled to cross-examine him but to bring independent evidence to refute the charges against your client that were contained in his affidavit or in his testimony.

So you could not be prejudiced in any event.

Now, gentlemen, just let me say one thing before we start on the trial proper. We have consumed here this morning about forty minutes on preliminary matters, many of which I think are very helpful, and the Tribunal I think would not want to dispense with this part of our procedure. Yesterday we consumed about thirty minutes. We shall probably have occasion from time to time to take a little of our valuable minutes for purposes of this kind. But will you please cooperate with us and permit us to cooperate with you in the future in reducing the amount of time that is consumed by this part of our program to the minimum? We will try to bear this suggestion in mind ourselves and not extend our remarks so that we do not waste too much time on these preliminaries.

The Defense may continue with the presentation of its evidence.

DIRECT EXAMINATION (Continued)

Dr. GUSTAV SCHLOTTERER, Resumed

BY DR. SIEGERS:

Q. Dr. Schlotterer, yesterday afternoon you were discussing the case of Dr. Roth who Farben helped to make a new living in Switzerland by giving him a very decent compensation. He had left upon the request of the State authorities because he was Jewish.

In conclusion, may I ask you merely to tell me whether the foreign organization of the Party approved of this compensation?

A. No, they disapproved of it, and the Ministry of Economics approved this application by Farben despite the opposition of the foreign organization of the Party.

Q. I shall now turn to the most important part of the questions I have put to you that is the main charge of the Prosecution covering the entire plan of the so-called New Order. First of all, look at the document Exhibit 1048, that is in Book 51, on page 128, of the English, and on page 35 of the German. This is Document HI-6842. It is a

Memorandum of the Management Division of Dye-stuffs of the 19th of June, 1940. It contains a notification of the Deputy Chief of the Prüfungsstelle (Examining Board) Chemie. I should like to ask you to give me your opinion about the first sentence, reading as follows: "Ministerial-Direktor Schlottner was nominated General-referent (general expert) for Demobilization in the Reich Ministry of Economy." I ask you to tell me what this means and what brought the establishment of this Generalreferent about.

A. First of all, I have to tell you that Mr. Born did not formulate this sentence correctly. I was not nominated as a General-referent for Demobilization. My mission was to the effect to take preparatory measures for peacetime economy after peace had been concluded, in the economy of our country. As to the question of Economic New Order and peacetime economy I should like to tell you this. The whole thing started by State Secretary Dr. Landfried shortly before the war combat actions ceased in the West, in about 1918, calling meeting and telling us that armistice negotiations and negotiations about a peace treaty would soon be taking place. He said it was the desire of Minister Funk to have these negotiations prepared, and he said that he was commissioning the departments of the Reich Ministry of Economics to gather material. State Secretary Landfried then decided and ordered that I should collect and order this material. Some time later a new conference with State Secretary Dr. Landfried took place. There he notified us that he had received information according to which the highest authorities in the Reich -- that is, Hitler, Goering and Ribbentrop -- were concerned with the question of the economic New Order of Europe after the war. State Secretary Landfried added that it had become known that Hitler intended to appoint a Reich Commissioner for these questions.

We were very much concerned about this policy because we feared that this would mean that the treatment of such an important task would be given into laymen's hands. The Reich Ministry of Economics had been competent up to the beginning of the war for the execution of economic negotiations with foreign countries, together with the Economics Department of the Foreign Office. We had the experiences by our dealings with foreign countries and the relations with foreign countries were available to us.

We had set up arbitrary government agencies in foreign countries abroad who were directing our economic contacts. With great concern we anticipated that an entirely new agency would now be created which would be a political agency that would shatter all our work and treat our tasks under political considerations. We had to take this threat very seriously because the nomination of Reich Commissioners for new functions and the elimination of the old departments was quite in keeping with the policy of the time and was already resorted to in former cases.

State Secretary Landfried decided as a result to invite Minister Funk and to request him to intervene with Goering or with Hitler and to ask him that if such plans were to be executed and prepared, the Reich Ministry of Economics should get the task to do this. After some hesitation, Minister Funk stated that he was prepared to go to Goering --

MR. SPRECHER: Mr. President, it is quite obvious that the witness is reading from a prepared statement. We have no objection to that where it is a question of expert matter. We think the record should indicate that. But what we are much more concerned about is the way counsel asks the question, which continues to start a witness on a prepared answer which does not give the Tribunal, we believe, and we are convinced it does not give the Prosecution, an opportunity to thoroughly discharge its functions.

The purpose of examination is that a proper question directed to a proper point elucidate from the witness a responsive answer. The question here made by Dr. Siemers was in connection with "a document which I show

you, witness. There is a sentence which reads as follows. Will you please comment on this..." And we have been hearing from the prepared statement of the witness ever since.

THE PRESIDENT: The Tribunal is hardly in a position to lay down a rule as to whether or not a witness testifying may read his answer or refresh his recollection from a memorandum. That is a circumstance that may be proper to show on cross-examination that the witness was reading. That is not the serious problem with which we are presently concerned.

When questions of a very general character are asked of a witness, it leaves it to the discretion of the witness when he has answered the question; we consume a lot of unnecessary time. It is much better if the question is drawn in such a way as to limit the scope of the proper answer, rather than to invite the witness to use his judgment as to how far he wishes to discuss it. On that basis, it is necessary sometimes for the Tribunal to intervene in the interests of time and orderly procedure.

I think, Doctor, that we would have better control of the situation here if you would make your questions a little more concrete so that the Tribunal is in a position to judge for itself whether or not your question has been answered, rather than to invite the witness to use his judgment as to how long he should talk or to what extent he should go into detail. We are going to sustain this objection and ask you to kindly form your questions in such a way that it is possible to determine when the question has been answered and when the witness is volunteering information.

I may say that you may, if you wish to have a treatment of something of a general nature that does not lend itself to a question and answer, you always have the means of preparing an affidavit, having the witness sign it if he is competent to give an affidavit of that kind. That is one way of meeting a situation of this kind and at the same time conserving the time of the Tribunal.

DR. SIEMERS: Your Honors, the question is of some significance, and may I therefore be permitted to answer Mr. Sprocher's statement?

THE PRESIDENT: There really is no occasion for any further discussion. The position of the Tribunal is this: When a question is so general in its character that the Tribunal itself cannot determine when it has been answered, then it is objectionable. In other words, a question which invites the unlimited comment and discourse of a witness is an objectionable question because it puts it beyond the control of the Tribunal to determine for itself when an answer has been made.

As I have suggested, if that is pertinent, important in the presentation of your case, under the very liberal practice that we have indulged here you should put it in an affidavit. If he is competent to give you an affidavit on intricate facts and details, that saves much time and gets the record in a better shape. We are independent of the objection of counsel for the Prosecution. The Prosecution on its own motion is obliged to frown on this sort of interrogation because it puts the testimony of the witness wholly beyond the control of the Tribunal.

DR. SIMERS: Please forgive me if I emphasize my request that I be permitted to make a short statement to what Mr. Sprecher has said, for his statement contained a reproach against me which was quite clearly expressed.

Mr. Sprecher concluded that Dr. Schlotterer's statements were so prepared that they were read. This conclusion is wrong. This conclusion is wrong because of the Prosecution's attitude I was unable to prepare my interrogation of Dr. Schlotterer. For weeks I tried to see Dr. Schlotterer without anyone of the Prosecution being present —

THE PRESIDENT: The Tribunal must, in the interests of time, intervene here. We do not regard the Prosecution's statement as any reproach of counsel for the Defense. We are not saying anything in the way of criticism of counsel for the Defense. It is certainly no reflection on the honor or integrity of any member of counsel, for the Court, from time to time, to sustain an objection. If we did, perhaps you would all be in very bad grace. We do not so regard it.

Now let's please move on. The Tribunal has tried to make its position clear. There is nothing now before the Tribunal.

DR. SIEGERS: Thank you, Mr. President, for your observations. Then I shall merely say something to the subject matter itself.

My question was quite clear, how was this Department brought about -- what caused the initiation of this Department. If this General Referat is so extensive and if it is regarded as so significant by the Prosecution that they have four Document books prepared, it is not surprising if the history or origin of such a large enterprise takes a few minutes to explain.

THE PRESIDENT: We will permit you to explain it fully, if you will ask questions that will give the Tribunal some control over the interrogation, and we repeat the suggestion made before, that if the subject is as large and comprehensive as counsel has indicated it to be, it would be an appropriate subject for an affidavit.

You may go along and ask your questions.

BY DR. SIEGERS:

Q.- Dr. Schlotterer, I ask you therefore when you describe historical events, only to cover short periods of time, and then I shall put questions to you which you will answer limited in scope so that no wrong impression is gained.

Since we have been interrupted, I should like to ask you first of all to tell me the following. You were talking about the imminent peace negotiations. With what country were they supposed to be concluded?

A.- First of all, no sentence that I have yet spoken in this courtroom has been read from a manuscript. I have spoken quite freely.

THE PRESIDENT: Mr. Witness, will you please undertake to answer the question of counsel. There is no matter of reading of manuscripts now before the Tribunal.

THE WITNESS: With regard to the question as to who was to be negotiated with, I want to say that it was Franco.

BY DR. SIRENS:

Thank you very much.

Q.- Dr. Schletterer then you said that the danger existed that the Reich Commissioner would have this matter worked on by laymen, - non experts, - and that this new agency would be a Political authority. Can you tell me from what circles this Reich Commissioner was to come, and who had planned the initiation of this agency?

A.- It had not yet been determined who this man would be, but in previous cases a Gauleiter was usually chosen for such work. For instance, the Reich Price Ceiling Commissioner was Gauleiter Wagner, so it was to be expected that a politician would again take over this job.

Q.- Funk went to Goering in order to discuss the matter with him. Did he also go to Hitler?

A.- I believe not.

Q.- What was the result of the conversation with Goering?

A.- Funk was given a mission to do the preparatory work for an European peacetime economy.

Q.- To whom did Funk, in turn, give this commission?

A.- To me.

Q.- That is how you became General Referent?

A.- I was not a General Referat. The Department was called the Preparations Department, and I was to be in charge of it.

Q.- The name, "Demobilization" was not used in this Department?

A.- No.

Q.- Dr. Schlotterer, the same document, 1048, does it not speak only about France, but about Switzerland as well, and England, Holland and so on, and at the same time, it says that special attention was to be paid to the Cartel relations. May I ask you to tell me what motives drove the Reich Ministry of Economics to embark on this mission which extended not only to France, when peace negotiations were to be concluded, but also to England which was at war and Switzerland, which was a neutral?

A.- The plans applied to France, later the scope was extended and Minister Funk told me at a later time, all European countries were to enter negotiations about an economic unity. I was given the mission to prepare these negotiations so that in case the negotiations began, the Ministry of Economics should have the necessary material available. I was also ordered to approach the Economics groups and representative firms in industry who were dealing with foreign countries.

I then however, made the counter proposition that the public should not be informed too much about this, because we were somewhat skeptical about imminent peace negotiations, and we did not think that the matter was so pressing.

At any rate we selected a few economic groups and a few firms with whom we got in touch.

Q.- Just a minute, Doctor Schlotterer. Please do not go too far because you might anticipate things that I have not yet asked you about, and I do not want the two of us to be reproached again.

When regions were to be covered by this New Order, that is the New Order planned by the Reich Government for which you were supposed to get material, all European countries were discussed; were the Neutrals included also?

A.- Yes, they were, among the others.

Q.- Italy?

A.- Yes, also Italy, was to be included in the negotiations.

Q.- Did this Government plan of New Order in any way have a connection with the waging of an aggressive war or with armaments question?

A.- This Government plan, in this particular case, referred to peacetime economy, and our department was called, "Preparation for Peacetime Economy", and as I told you, Minister Funk stated that he wanted to prepare for peace negotiations and for the regulation of European Economy during peacetime. At that time he was already talking about a sort of European economic conference that he wanted to convene.

Q.- Were there any special plans drafted in this connection regarding customs and foreign exchange?

A.- Yes, during these negotiations, one wanted to include discussions about a customs unions and unions of currency. The name mentioned at that time was called, "European Economic Union". It was to be a unification of all European states and it was intended, within the framework of this unification, to let the customs frontiers and foreign exchange differences gradually disappear.

Q.- You said that you approached firms, and in particular Farben, for material to make preparatory work for the peace treaty itself. Did Farben give you the desired material?

A.- Yes, Farben made a lot of material available to us, reports about several countries, suggestions about Franco, —

Q.- Just a minute. We shall come to speak about that later. First of all, I want to know, did the material made available to you generally correspond to this ideas and to the desires of the Reich Ministry of Economics?

A.- As basic material for negotiations, it corresponded to our wishes. We wanted to have documents and material that we could utilize for imminent negotiations and this material was suitable.

Q.- And who from Farben did you particularly talk with in your personal negotiations?

A.- I remember Dr. Schnitzler, Dr. ^Ilgner, Dr. Krueger and Dr. Terhaar.

Q.- The new draft of Farben regarding the New Order, bears the date of 3 August 1940. I should like to ask you a few questions about it. May I state for the record, and for those present here that it is in Book 51, on page 155 of the English, and in the German in a special volume. This comprehensive document of approximately 100 pages, is directed to you. It says on page 1 and I quote, "Through these contributions we might facilitate the planning initiated by you." Were your plannings actually facilitated by these works; did you get the necessary economic information?

A.- Yes, I can say that. Whenever we had negotiations with foreign countries we had always approached economic organizations and other firms in order to get such surveys which facilitated our work. I believe that this is customary in other countries as well.

Q. Please look at page 5, - that is still Document 1,252, Exhibit 1052, and so far as I can see this is on page 156 of the English Document Book under Number 1, which is the end of the accompanying letter signed by Dr. Schnitzler and Dr. Krueger. The sentences which are contained and which the Prosecution considered especially incriminating, we are presenting in evidence. The general part is referred to and it says literally:

"Pursuant to request formulated by the Reich Economic Ministry, a compilation has been added to this general part covering direct damages sustained by I.G. Farben and by its legal predecessors and syndicate companies as a result of the Peace Treaty of Versailles."

Who stressed this question that is mentioned here, and what thoughts were underlying the motives of this request of the Government?

A. It was on order of the Minister of Economics and of the State Secretary which referred to a directive of Hitler and Goering and to a directive of the Minister of Foreign Affairs as far as I know. I was told at the time that in the imminent peace negotiations with France, the question of the exchange appropriation of German property by France under the Versailles Treaty should be discussed.

As a result, the Reich Ministry of Economics had been given the order to request the respective firms to make compilations about exchange appropriations of their property by France as a result of the Versailles Treaty; I was supposed to collect all of these lists.

Q. I believe that is enough, Dr. Schlotterer. Retribution requests, and liability requests are very often compiled. I am interested in knowing whether this idea to make the damages formerly sustained the basis of negotiations, - whether it was written down anywhere officially?

A. I believe it is contained in the preamble to the Armistice Agreement with France, but I am not quite sure.

Q. Was this idea to mean that, as the Prosecution contends, everything was to be turned back to the time before the first World War?

MR. SPRECHER: Mr. President, it seems to me we are only being reasonable in coming to the podium again and again, if necessary.

THE PRESIDENT: Now, Mr. Prosecutor, state your objection.

MR. SPRECHER: I object to the method of counsel and ask that counsel be instructed with respect to statements, "Is it true as the Prosecution contends", or "Is it true what we the Defense—"

THE PRESIDENT: That is enough. The observation of counsel for the Defense is unfortunate and unwarranted. He should not undertake to draw his own conclusions as to the Prosecution's motives or purposes, but simply state his question and leave the ultimate questions to be determined by the Tribunal.

The objection is sustained.

Q. Was this New Order to achieve a state of affairs which was to be based on the status quo ante before the first world war, 1914?

A. It was not our opinion that that could be done, for in the meantime Europe had experienced a very extensive development, and it is impossible in economy to turn back the wheels. For that reason we certainly knew that we could point out the past things and events, and that we could use it as a basis but that we would have to find solutions which would fit into the new situation.

Q. May I ask you please, to turn to page 22 of this document. I am sorry, I don't know the English page. It is on page 165 of the English, the text begins on page 166. This is the beginning of the description of the economic situation in France. On page 23, page 166 of the English; the basic opinion is given which was emphasized as incriminating by the Prosecution because a restriction of French Export is suggested. The next sentence however, was not read. It begins on page 23 at the bottom and reads: "In our subsequent statements we have been motivated by the endeavor to somehow point out a program designed to ascertain how, on the basis of economic cooperation of the French and German industries, to effect an economic optimum solution".

Did this idea of Farben correspond to your policy and to the policy of the Government in connection with what was stated by the Prosecution with regard to export?

A. We were looking at this from the economic angle, and we wanted solutions. We wanted action which would not leave any bitter taste at a later time, and in which all participants could help. We knew that if any one of the partners would sign a contract, and if he has already then decided to undo what he has signed, it would then be useless to start the whole matter.

I must say that particularly at the time this report was drawn up, it was very difficult to think along these lines economically, because we had an exuberant spirit after the successful conclusion of the French campaign. The bitter feeling about Versailles predominant in the German people asserted itself and thus these economic considerations were colored with a certain political atmosphere. I should say that we wanted to have reasonable measures in economy which might last for a long time, and that these considerations predominated on our part.

Q. Thank you very much. The New Order, as I mentioned, is alleged to have been conceived in connection with the preparation of wars of aggression and armament measures. In supplementation, I must ask you, can you tell me whether Farbon's draft that you studied in detail at the time, and which you have again seen now, had anything to do with the preparation of wars of aggression and with armaments ideas, or if there were any indications along those lines in these drafts?

A. I have to tell you that we concerned ourselves with preparations for a peacetime economy and that we in the Reich Ministry of Economics did not concern ourselves with armament questions. That was the affair of the OKW which had its particular armaments office. Therefore I can say that these things played no part in our considerations.

DR. SIMERS: Mr. President, this would be the proper time for a recess.

THE PRESIDENT: The Tribunal will arise for its morning recess.

(Tribunal in recess until 1115 hours)

THE MARSHAL: The Tribunal is again in session.

BY DR. SIEMERS: (Counsel for defendant von Schnitzler)

Q.- Dr. Schlotterer, before the recess we were discussing the question of whether there was any indication of aggressive war in Farben's plan. In order to clarify this matter, I must ask you to look at a particular point which is also in the record. That is on page 15 of Exhibit 1051, the Farben draft. It is on page 162 or 163 of the English. I don't know whether it runs over onto the next page or not. It reads;

After the European Continental Chemie had been discussed and then the forces are discussed which would be decisive in the world market after the war, it reads literally:

"The principal weight of the discussions bearing on a new arrangement of the world market will rest on the relationship with the North American concerns. Forced away from European business for reasons which were already in effect prior to the war and which will become increasingly effective after the war, the Americans will do everything within their power to maintain and promote the development of their exports of chemicals which during the war they were able to send to countries other than European. In this connection there appears in the foreground the Latin-American market, the importance of which must be measured not only by the economic volume of present sales but also from the standpoint of economic development possibilities and trends which that part of the American continent offers in the future."

Was this new order aimed, as was said here once, to limiting munitions production in Latin America?

A.- We did not concern ourselves with that idea at all. That would have been a nonsensical idea, for one had made if such a suggestion to a South American government, I believe they would have thrown one out.

Q.- Can you explain to me the idea underlying the quotation that I just read?

A.- Well, I believe that this idea expresses concern about what would become of our and the European exports to South America. One cannot deny that certain South American markets were a sort of battleground between German and US. exports, although these things were somewhat over-estimated. Principally, this was limited to a few products, but at any rate, it played a certain part, and the report, of course, asks, "What is to become of these exports after the war? That's a very significant question, because I think that Europe needs South American exports because the necessary food-stuffs and raw materials come from these countries, without which the maintenance of the living standard of the European countries is not possible. That is the indication contained in this report.

Q.- Dr. Schlotterer, an entirely different question. Was the government plan of the New Order at any time anywhere discussed publicly?

A.- Yes.

Q.- Please, Dr. Schlotterer, pause a little after I have asked my question to show some consideration to the interpreter.

A.- Yes. Minister Funk held a large press conference, at which German and foreign press representatives were present. At that time the American press was still there. Funk's speech to the press was printed and was distributed in pamphlet form. Hundreds of copies of the pamphlet were distributed at home and abroad and should still be in existence. This pamphlet contained the ideas in general.

Q.- Was this New Order executed in particular points; that is to say, did these drafts of the government agencies have any practical results?

A.- No; it was peace-time planning in the somewhat unrealistic hope that the Third Reich might some day sit down to negotiations with its enemies. One can say that beginning with 1941 this hope became less pronounced and the discussions and work died down, and in 1943, the planned negotiations were entirely stopped with the reason given that from now on

only important war-time planning would be permissible, and the entire work was dissolved in 1943.

Q.- On the 3rd of August, 1940, Farben sent you this draft. After they sent this material, were there any detailed negotiations with the Farben people? Were there any new drafts or amendments submitted? Do you know anything about that?

A.- I do not believe that that was the case.

Q.- May I now ask you to turn back in the How Order, Exhibit 1051, to page 2A. That's on page 155 of the English document book. At the end of the page, interests in European countries and also non-European countries are discussed. Then it says, and I quote:

"In this connection thought is given to cartels, capital investments, exchange and experience."

First of all, one preliminary question: Were you in the Ministry of Economic on principle in agreement with the cartel idea mentioned by Farben in this draft?

A.- We considered the cartels an unpleasant thing, but we thought that in the European relations in some cases one could not do without them, and for that reason we tolerated them and were convinced that one would need them for some time. One must take into account —

Q.(Interrupting) - Just a minute, Dr. Schlotterer. Do you know of cartels which Farben founded in the dyestuffs fields before the war?

A.- I know that such cartels were in existence. I don't know the details.

Q.- Could you perhaps tell me what countries or firms had cartels with Farben? Do you know that?

A.- Yes. For example, France, England - I.C.I. - and I believe there were also certain agreements with American firms. I don't know whether these were cartels or cartel-like arrangements.

Q.- Do you know how the collaboration was in this I.C.I. cartel?

A.- We never heard any complaints, and we had the impression that the two partners, Farben and I.C.I., got along very well and that they were of the opinion that the mutual interests could be safeguarded very well under this arrangement.

Q.- Do you recall what ideas were promoted by the government, on its own initiative, in connection with the cartel question. In this connection, I should like to put a document to you, Exhibit 1052. That is in Book 51, on page 67 of the German and page 199 of the English. This is a file note about peace-time planning, dated the 7th of August, 1940, well-known file note reporting the conference with you, Dr. Schlotterer. Cartels are discussed in this memorandum. May I ask you please to look at page 73? That's page 203 of the English.

Your Honors, I quote the decisive sentence, because I believe that it is extremely important and illuminating and was emphasized by the Prosecution. It's on page 203 of the book:

"The fundamental constructional principle of the Economic Group, as we were able to establish after surveying the completed draft...", and I insert that this is written by Farben."is definitely the cartel principle. All the European industries are to be organized, each in its own time, into such planned cartels, voluntarily linked together, in order to regulate within this organization the production and the market under German management and in accordance with German interests. The foreign relations of these cartels with countries outside Europe is to be regulated by means of special syndicates attached to the cartels."

I shall now quote from page 2484 of the record of the 21st of October, the addition of the Prosecution:

"In our opinion, this shows that the cartel was used as an economic weapon of war."

Dr. Schlotterer, may I ask you to express your opinion on this sentence and on the underlying idea of the government in regard to cartels?

A.- I must first ask whether the words "economic weapon of war" are to be understood to mean that the cartels were to wage an economic war, or whether this means that they were to prepare a real war?

Q.- Mr. Schlottner, I am sorry I cannot answer that either, because that sentence was spoken by the Prosecution, but since it belongs to the general problem of preparation of a war of aggression, I should assume that the Prosecution meant it to mean preparations of war.

A.- I said previously that we regarded the cartels as an European evil, but a necessary evil, and in this concept we agreed with Economic Group Chemistry. We held the opinion that in the so-called New Order those international cartels which had proven their value and against which there were no complaints should be retained; that one would have to investigate whether some cartels might perhaps have become superfluous, if not immediately perhaps at a later time; that one should check to see whether in one case or another one might not have to form a new cartel. Our attitude was always that the cartel was a voluntary union and, equalization of the most varied interests.

Q Dr. Schlotterer, what is the attitude of the British on the question of cartels? Only a short survey.

A I believe not very enthusiastic about it, nor 100% apposed. Perhaps a little more skeptical than one is in Germany and one the continent in regard to cartels. The problem raised by were well understood in Germany and even better in England, but one did not see a possibility of freeing oneself completely from this institution in the near future.

Q Dr. Schlotterer, is this true of all industrial fields in England?

A I believe that in the chemical field there was a positive attitude toward cartels, because a cartel is created when the competition becomes destructive, and that is especially true when expensive installations are constructed and the market is relatively small. Then there is a war of all against all in order to utilize the plants, and this ruins the price and there from arises the desire to change the situation.

THE PRESIDENT: I'm wondering, counsel, if we are not getting a little bit far afield in the discussion of the propriety, morality, and economic soundness of the so-called cartel arrangement. This Tribunal would only be interested in that subject insofar as it related directly to some issue raised by the Indictment and the evidence of the Prosecution. Now, I have the feeling that perhaps we're getting away from the major premise and getting onto the questionable territory of a collateral issue here.

DR. SIEMERS: Mr. President, I'm sorry if I have bored your Honors with my questions. However, I said to the witness at this very moment, I believe this is enough. I merely wanted.....

THE PRESIDENT: Very well. That does answer it. We were not quarreling with what you had done. We are just looking ahead as to where we might be trending, and I'm sorry that I did not notice your observation that you did not intend to go further. You may go along.

BY DR. SIEMERS:

Q Now, I need only the answer to one question, Dr. Schlotterer:

That is that passage in the record which I read, according to the Prosecution says that the cartel system was an economic weapon of war for Farben. Is it correct that from this plan one can conclude that any weapons of war were created and that preparations for war were made?

A As far as I can judge, one cannot conclude that from the plan.

Q I ask you now to look at Exhibit 1053 in Book 51, on page 81 of the German and on page 208 of the English document book. This is a letter from Schnitzler, dated the 22nd of October, 1940, to the members of the Commercial Committee. From this letter it can be seen that Ministerialdirigent Dr. Mulert asked Farben within the framework of the New Order to express its attitude toward England. Do you know about this, and can you tell me what idea underlay the desire of Dr. Mulert?

A I did not discuss it at that time with Herr Mulert, and, therefore I do not know exactly what he had in mind. I assume that he wanted to get some material. I never saw this document until now.

Q Did you share Dr. Mulert's opinion that, at that time already, material should be gathered for later peace negotiations with England?

A I remember that Dr. ter Haar came to see me one time and told me that he had been given the mission, at Dr. Mulert's instigation, of working out a draft about England. He said that he did not like to do that, and he asked me for my opinion. I told him that I considered such a report superfluous and that he should not do anything.

Q Was such a draft about England made?

A As far as I know, it was not.

Q Did the Reich Ministry of Economics ask for surveys from Farben also in other questions under the New Order, or did they ask any questions of Farben for that purpose?

A Yes, very frequently. Farben was the only firm in Germany which had an economic research department with scientifically trained personnel

and at regular intervals, especially when important negotiations were imminent, we approached Farben with a request for reports.

Q Did the Ministry of Economics approach other branches of industry as well and other firms in this and in other cases and request material from them?

A Yes. Normally, when there were negotiations in the immediate future or if important economic political decisions had to be made, and also in connection with preparations for peace settlements.

Q Did the Ministry of Economics approach the Economic Groups as well?

A Some of them.

Q I shall submit a document to you which I found among the documents which the Prosecution has not offered. This is MI 6841.

Mr. President, I shall incorporate this document in my document book. I should merely like to identify it now. It refers to cartel relations that we do not have to discuss any further. It is a letter of the research agency Chemio, Dr. Ungewitter, to Farben. On page 2, Dr. Ungewitter states that he approached not only Farben, but also a number of other firms, and ten or eleven are mentioned. I submit it to you merely to hear from you whether this was the customary way, did a Reich agency or the Ministry of Economics approach simultaneously, if necessary, numerous well-known firms?

A Yes, that was customary. We did not want to reply completely upon the Economic Groups which had to take care of hundreds and sometimes thousands of firms, so that we might have to fear that certain peculiar circumstances were not sufficiently taken into account, and, for that reason, we had two tracks along which we moved. First of all, we approached selected firms. This enabled us to check the reports.

Q One last question in this connection: Do you remember this letter, or did Dr. Ungewitter work independently from you?

A I talked to Dr. Ungewitter from time to time. I must say that Ungewitter enjoyed a certain independence, so that he could write such

a letter without consulting us. I do not remember that he consulted me in this case.

Q Mr. President, may I ask that this document be marked Schnitzler Exhibit No. 5, for identification?

THE PRESIDENT: That may be done.

BY DR. SIEMER:

Q Thank you, sir.

Did the Reich Ministry of Economics and you in particular know that Hitler planned to overrun Czechoslovakia by force, and were there any conferences held in the Ministry of Economics about this plan?

A I do not know anything about conferences, and nothing was not told whether other agencies in the Reich Ministry of Economics, perhaps the Minister himself, knew about this; I cannot tell you that.

Q Did you learn about Hitler's plan, and did the Reich Ministry of Economics learn about Hitler's plan in regard to Bohemia and Moravia - the second phase in Czechoslovakia - before Hitler concluded the agreement with President Hacha in Berlin, and did any negotiations about these plans take place in the Ministry of Economics.

A There were no negotiations. Neither I nor my colleagues learned of these things before the newspapers reported them, just like any other average German.

Q Did you and your colleagues in the Ministry of Economics learn that Hitler stated to the Supreme Commanders on the 23rd of May, 1939, that he was going to attack Poland at the next suitable opportunity?

A No, I never learned about this, and I believe that I can say the same of my colleagues.

Q This statement was made in May. Did you at a later time, before the beginning of the war, learn of Hitler's firm resolution to wage an aggressive war against Poland?

A No.

Q Please tell me what you know about the negotiations between Farben and the French dyestuff factories; do you know at whose request these negotiations were set in motion?

A I cannot tell you that exactly. I believe that the concrete desire to build up a joint dyestuffs organization with the French, was started by Farben on the German side.

Q Did you participate in these negotiations in any way?

A No. In the beginning, long before these negotiations began, I did have a conversation with people from Farben, where these people told me their attitude on these problems. I did not participate in the later negotiations.

Q How was the F ransolor agreement judged in the Reich Ministry of Economics, from the point of view of national economy?

A Farben told us at the time that in keeping with the policy of intensified Franco-German economic cooperation, Farben wanted to

take up old contacts which they had previously had with the French dyestuffs industry. Farben, so they said, had been forced out of the French dyestuffs business by the Versailles Treaty. We were told that they were well aware of the fact that the wheel could not be turned back, but new points of approach were now being searched for.

Q Dr. Schlotterer, I think you deviated from my question somewhat. I deliberately did not want to ask any particular questions with regard to Francolor, as you are not an expert for this agreement, but I wanted to know how the Reich Ministry of Economics judged this agreement from the point of view of national economy. The fact that within the framework of the Francolor Agreement, there were certain values and processes made available to Francolor?

A I was just coming to that. When Farben reported this plan to us, our first reaction was of course a certain concern, or worry, because we thought that a certain degree of German technical progress was being given to foreign countries. That is a problem that occupies every country. To illustrate what I mean, I should like to point out that Switzerland, for instance, does not permit its special equipment for watch production to go abroad and that there are strict laws against exportation. We were of the opinion that this particular question of turning over German patents and licenses to the French group, should be studied carefully. Later we bowed to the arguments presented by Farben, saying that in the interest of Franco-German collaboration and European construction, we had to do so. Moreover, in the case of such agreements, there must be a give and take, and this technical progress was what Farben had to offer to the French, so that they might be able to take something from them in turn.

Q The next subject is a short chapter about Russia. If I remember correctly, you said that in 1942, when this Referat of the New Order was dissolved, you became an expert for questions to do with Russia.

A I had already become this previous to that time.

Q May I ask you to look at Books 63 and 64, where I have to point

out a few passages to you? Please turn to Book 63, Exhibit 1175, on page 39 of the English, and 33 of the German.

A I do not have that document.

Q Perhaps you do not have the numbers, Dr. Schlotterer. It is on page 33 in Book 63. It is WI 2996. It is a situation report of the East Liaison Agency on Russia, of 3 January 1942. On this first page it is stated that you, in the Main Department Economy, are directing the economic department. Is that right?

A Yes.

Q Then on the next page there are three groups consolidated. The companies for acquisition and trade (Erfassungs- und Handelsgesellschaft). Then the operational companies, (Betriebsgesellschaften), and on page 35 in your big book, under Roman numeral III, "Sponsorship Companies" (Betreuungsgesellschaften). Among these sponsorship companies, the Chemie Ost GmbH is mentioned, which I shall ask you about right away. First of all, however, I should like to know what does this mean - Betreuungsgesellschaft, (sponsorship company)?

A Betreuung, to care for something, means that these companies were to take charge of certain plants in the occupied Eastern areas. They were to act as trustees, but they were not to be the proprietors or have any rights of possession in these plants.

Q Isn't this generally called a "trusteeship company" (Treuhandgesellschaft)? What is here called Betriebsgesellschaft (operating company) -- the well-known Berg- und Huetten-Werks-gesellschaft, which operated plants as trustees?

A I told you just now that "betreuen" was to care for something, and means that the company itself does not own the property, that it does not operate it on behalf of the enterprise itself, but that they have these plants operated on their account, that is to say, that they have independent trustees to operate them individually.

Q What did the Chemie Ost GmbH, in which Farben was participating,

with a share of 1000 marks, equal to 5 per cent - what did this Chemie Ost actually do?

A So far as I know, nothing at all. No enterprises in this field were turned over to Chemie Ost, so far as I know, and I do not believe that the Chemie Ost took any action any action whatever.

Q Was it intended that Chemie Ost should, in particular, have anything to do with exports to the East?

A These sponsorship companies were to take care of plants in the occupied territories, and in these occupied territories matters were such that the plant was either partly or wholly destroyed; that there was no raw material; that there was no trained personnel. In order to get the plants to operate, materials and machinery had to be supplied, and that was the task of the sponsorship company, if it ever became active at all.

THE PRESIDENT: I think we had better rise for our recess. The Tribunal will rise until one-thirty.

(Tribunal in recess until 1330 hours)

AFTERNOON SESSION

THE MARSHAL: Persons in the courtroom will take their seats.

The Tribunal is again in session.

THE PRESIDENT: Gentlemen, it appears we are somewhat short of personnel here. The Tribunal will appreciate the favor if you will remind the Brethren of the time when the Court convenes.

Just one matter I should like to mention. I have been advised informally that the cross examination of the witness Krugovsky has been waived. Are you informed as to that, Dr. Boettcher?

DR. BOETTCHER: Mr. President, I heard of this intention, but on Thursday afternoon there is to be a conference of the Defense Counsel, and just by way of precaution I should like to discuss this question at the defense counsel meeting on Thursday, and I hope that we will have an opportunity to discuss the other affidavits who are outstanding.

THE PRESIDENT: Very well. At the proper time, Dr., please advise the Tribunal and we will make a mention of it on the record.

That is all.

What about the interrogation of this witness? Is Counsel ready to proceed?

DR. FRIGILLA: Mr. President, I saw at a glance that the mess hall was overcrowded and Dr. Siemers was very late in getting his lunch. I am sure that this is the reason for his being late, and I am sure he will be here in a minute or two.

THE PRESIDENT: Very well.

One other thing I should like to mention. Those responsible for maintaining the transcript have asked me to remind Counsel for the Defendants that it makes a better record, if, when you address the Tribunal, you mention not only your own name but for whom you are speaking, inasmuch as some of Counsel represent more than one defendant; in reading the record it is helpful to know sometimes, incidentally, whom Counsel represents. If you will bear that word on to your associates, Dr. Boettcher, it will be -- it will make for a better record.

MR. SPECKER: Mr. President, your remark calls to mind another

motion which is outstanding, and, namely, a Prosecution motion to correct the English transcript in certain particulars. I believe that that has been outstanding now for several months. We have a second proposed motion of that character which is in the making and which will cover a good deal of the Prosecution's case in chief. But we have hesitated to file it since there had been no showing of any reaction to the first motion by the Defense, and those experts and assistants that your Honors secured for the defendants have been with them for some time now and we think that the transcript should have some attention paid to it in that regard.

THE PRESIDENT: Thank you, Mr. Prosecutor.

Dr. Soettcher, will you bear that matter in mind also and see if we can bring the motion to a conclusion? It perhaps would be more confusing if the Prosecution should file a second motion before the first is acted upon, and if you can hold that up for a very few days, we will undertake to get the other disposed of. Thank you.

MR. SPEECHER: And, in that connection, just one second point. In about four or five instances individual Defense Counsel had submitted informal memorandums to me, sometimes after discussing corrections in the record with assistants of the Prosecution who do understand both the English and German language. We have not forgotten those, but it seemed to us appropriate to have them incorporated into either a motion by the Prosecution or a motion by the Defense so that the record would not be unduly complicated here in open court by a number of individual recommendations.

THE PRESIDENT: That would be better. We prefer to have it done that way, if you will.

Are you ready to proceed, Dr. Siemers?

DR. SIEMERS: Mr. President, I beg your pardon for being late.

DIRECT EXAMINATION (continued)

DR. SCHLOTTERER

BY DR. SIEMERS:

Q Dr. Schletterer, we were discussing Document Book LXIII, Exhibit 1175, on page 33. Would you please look at this once more? In the English Document Book it is on page 37. I have one question, on page 5 of the original -- that is on page 35 of the German -- and I believe on page 40 of the English Document Book which reads: "In the field of the general work of general reconstruction to be performed in the East it is of interest that the question of foreign investments has gained importance. It is not yet known to what extent and in what sum the Government of the Reich intends to take investments by the European countries." Will you please explain what the Ministry of the Economics or the Government had in mind here?

A In the occupation of the near Eastern territories, it had been observed that there had been a great deal of destruction and evacuation to the Urals, etc., by the Russians. In order to get the economy running, new material, machinery, tools, etc., had to be supplied. And the question soon arose that other European countries and their industries should participate in this reconstruction work and in delivering the supplies. The idea generally was that in the military as well as the economic field the matter might in a sense become a European affair. In many cases the Dutch had an especially large part and a company was founded in Holland which brought farmers and gardeners to the East, and also named trustees for certain enterprises.

Q Dr. Schletterer, now I should like to ask you about something which happened a lot earlier than what we have just been talking about. I go back to the year 1939. Will you please tell us what the German-English industrial negotiations in March 1939 were about?

A The beginning of this was farther back. It was in 1936. The official attitude of the English government and English economic circles toward the German problem was about as follows: England acknowledges that Germany needs raw materials and food for her industry and her population. In the attempt to obtain these raw materials and this food, there are two means -- the peaceful method by world trade, export; and

the belligerent method; by the occupation of countries. The English Government told us that they would help Germany in the first method but that they were determined to fiercely oppose Germany if she should take the second method. After the Munich agreement had been concluded, some British circles approached the Reich Ministry of Economics and suggested that since political methods had not had any success, business should try to build certain bridges. It was suggested that there be a discussion about Germany's participation in world trade and cooperation with England in the solution of these problems. The Reich Ministry of Economics accepted this suggestion, and these discussions were to take place in industrial circles. We didn't want to have any official discussions because the political line would have interfered then. That is the background. The Federation of British Industries appointed a delegation and Germany appointed a delegation from the Reich Group Industry. A detailed program of the negotiations was made. It was expected that the negotiations should take place in Germany, beginning in the West and then being concluded in Berlin. The English delegation arrived in Germany in March, negotiated in the Ruhr with the Germany delegation, and negotiations were unexpectedly favorable.

Q Let me interrupt you for a moment. You say that both sides appointed a delegation. Who appointed these two delegations?

A We did not appoint any official delegation. We told the Reich Group Industry that we welcomed this British suggestion and that we were willing to have the Reich Group Industry devote itself to these negotiations and that the Reich Ministry of Economics would be willing to honor the results of any such negotiations. The Reich Group Industry then appointed the delegation.

Q. And how about the British side -- was it the same or similar?

A. I believe it was similar. The Board of Trade was the office which patronized these negotiations.

Q. Can you give any names on either side of the people who were delegates and participated in these negotiations?

A. On the German side the chairman was Mr. Poensgen. The deputy chairman was Mr. von Schnitzler. I believe Mr. Junghans was there too.

Q. Do you know any names of the British?

A. No, I don't remember any.

Q. Do you recall the exact date of the negotiations?

A. I was about to say that I do not remember the exact date, but it would be very easy to determine it. The first agreement was signed. It was expected that the two delegations would come to Berlin. The British Ambassador had already arranged for a reception and then the occupation of Prague occurred and the English delegation was ordered by their government to return and the whole thing fell through.

Q. Were negotiations already under way?

A. Yes, I believe they had begun in Dusseldorf and had resulted in a preliminary agreement.

Q. Do you know how many days they had been going on?

A. I cannot say exactly.

Q. And as a result of the unexpected events of Prague the whole agreement fell through?

A. Yes.

Q. Did you subsequently, at any time, discuss these matters with Dr. Von Schnitzler?

A. Not immediately afterwards, I believe, but at some later time.

Q. What did Dr. Von Schnitzler tell you about these negotiations? What was his attitude?

A. The attitude of Mr. Von Schnitzler was exactly like that of all the other gentlemen who had participated and who knew about these negotiations -- that is, deep disappointment at the fact that nothing had come

of this very promising attempt.

Q. Do you recall or did you have the impression that Dr. Von Schnitzler, like yourself, was complete surprised by the events in Prague?

A. I believe that it was a stroke of lightning from the blue for him as well as for all of us.

Q. You just mentioned the Reich Group Industry, a sub-division of which is the Economic Group Chemistry which, I believe, you already mentioned too. I merely want you to tell me whether the Reich Group Industry is a government agency or an institution of industrial self administration?

A. It is a composite of both. It was on the one hand a group formed by industry, but it differed from other such groups in that the Reich, the government, had organized it compulsorily and this organization worked on official directives and exercised official functions, in addition to certain industrial functions. In other words it was between a government agency and a purely economic institution, but it had a definite official character.

Q. Were the members of the Reich Group Industry its managers -- state officials?

A. No, the Reich Group and the Economic Groups had main managers and managers -- Hauptgeschäftsfuehrer and Geschäftsfuehrer. They were employed by the Reich Groups or the Economic Groups.

Q. Could the Reich Group issue orders, promulgate their directives in the Reich Legal Gazette, Reichsgesetzblatt, or did it require aid from the State agencies?

A. It could issue orders referring to the Ministry which were binding but these orders did not have the power of law.

Q. Thank you. No further questions.

THE PRESIDENT: Now gentlemen, I believe that I may speak for my associates as well as myself when I say that we have a feeling that very much of the testimony of this witness has related to matters of not very great concern to the Tribunal. I am not prepared to say, and certainly do

not say, that there is anything wrong with the course of the cross-examination. It may be that a part of my feeling grows out of the question of whether or not there is much relevancy in the Prosecution's exhibits to which the cross-examination relates, as well as the cross-examination itself. I am just saying this frankly to you because I have a very genuine feeling that the further examination of this witness ought not be unduly prolonged, if you are undertaking to be helpful to us, as we feel certainly you are. With those observations, the witness is now available to any other defense counsel for further interrogation.

BY DR. LINGENBERG (Counsel for Dr. Ilgner):

Q. Considering the instructions which the President has just given I shall limit myself to a few questions. Dr. Schlotterer, I should like to know whether, in connection with the plans of the New Order in the West, specifically with respect to France, there was any discussion between the Reich Ministry of Economics, especially yourself, and my client, Dr. Ilgner?

A. In connection with France there was none as far as I can recall.

Q. Then you made a statement in an affidavit in Volume 57. I may assume that was mistaken?

A. If that is the logical conclusion then you are right. You may assume that I was mistaken.

Q. Can you recall, Dr. Schlotterer, what you negotiated with Dr. Ilgner? You know him.

A. Primarily the South-East.

Q. Could you tell me in a few sentences what your impression was of Dr. Ilgner's South-Eastern European plans, from your perspective as an official in the Ministry of Economics?

A. Dr. Ilgner was of the opinion that Germany, and specifically German industry, had to help in the industrialization of the agrarian countries of the southeast. He believed that the purchasing power and the living standards of these countries could be raised if industries were

created there. He was very well acquainted with the economic provisions of the southeast and he represented the interests of the southeast countries and the men of government and industry generally considered him a friend and a promoter of these countries.

Q. Did Dr. Ilgner speak to you and hold any point of view in respect to national minorities?

A. He was not of the opinion that if joint industries are founded the majority had to be in the hands of Germany. He thought that the matter would simply be fifty-fifty. He said those countries would hold fifty percent and we would hold fifty percent. That would be the best proportion.

Q. Can one say that the point of view held by Dr. Ilgner in this connection, that of cooperation with industry in other countries, can be reconciled with the concept of plunder and spoliation?

A. No, one really can not say that. On the contrary, he was of the opinion that by cooperation both parties would benefit.

Q. Dr. Schlotterer, you were for many years a Reich official and you doubtlessly had occasion to hear something about many things which did not belong to your own sphere of work. Did you ever hear that I.G. Farben offered its services to any State or Party agencies for espionage purposes?

A. No, I never heard of any such thing.

DR. LINGENBERG: Your Honor, I shall not put any further questions to this witness since I have some affidavits from him and I believe that in the interests of saving time it will not be necessary to examine him.

THE PRESIDENT: Thank you counsel.

BY DR. HENZE (Counsel for Dr. Oster):

Q. Dr. Schlotterer, you were speaking about Chemie-Ost, G.m.b.H. Are you aware that there was a Stickstoff-Ost, G.m.b.H., founded at that time?

A. Only very vaguely.

Q. Did you have any part in this foundation?

A. No.

Q. Did you later learn anything about the development of this company?

A. No.

Q. Then it was of no significance?

A. I cannot say. These chemical matters were handled by the Chemical Department and I had very little to do with them. I was only very vaguely informed later and therefore know little about them.

DR. HENZE: Thank you.

BY DR. SILCHER (Counsel for von Kriebitz):

Dr. Schlötterer, you were speaking of the Reich Group Industry and said that in contrast to normal economic organization it was a compulsory organization. Do you mean to say that the Reich Group Industry was alone in this respect or was it only one of many such compulsory organizations in German industry?

A: There was one organization of German industry which was a compulsory organization, if one may use this expression, and from this over-all organization the Reich Group Industry was a part. At the head was the Reich Chamber of Economy and then the regional branches, the Chambers of Commerce and the Chambers of Industry, and divided by spheres were the groups of industry, trade banks and insurance and these again had their own branches.

DR. SILCHER: Thank you.

THE PROSECUTOR: May I ask further questions of the defense? If not the prosecution may cross-examine.

CROSS EXAMINATION

BY MR. NEALY:

Q. Dr. Schlötterer, is it your position that the New Order was only to be put into effect after there were no longer armies of any of the allies of France in the field attempting to restore the status quo?

A. I believe that we did not consider these military factors. At the end of hostilities we had to prepare directives for negotiations. Under what circumstances and after what military events these negotiations would take place we did not know.

Q. Were there any other German firms which actually submitted a New Order plan in 1940 or 1941? If so, please state the firm and also state to whom it was submitted.

A. Other firms did not submit any written plans to me. On the other hand there were discussions with men of other firms. We asked

for the opinion of these gentlemen and we used these opinions in our work.

Q. Did I correctly understand that planning of peace economy was dropped by your ministry in 1942?

A. Whether it was in 1942 I can not say exactly but I believe that was the year. At any rate at a certain period of the war official instructions were issued that peace planning was to be dropped. The personnel that had been busy with this peace planning would either have to be used for war economy tasks or made available to the military.

Q. Did you study yourself Farben's New Order plan at the time as far as the French chemical industry is concerned or did you just pass it on to the chemical department?

A. I did not study the chemistry report thoroughly and carefully. I believe it was Dr. Tschuer who gave me certain details orally, but since I myself was not in charge of this matter I probably did not study the report thoroughly.

Q. Didn't it come to your attention that after France was overrun many parts of the Farben New Order plan with respect to chemistry were put into effect?

A. No, only that there were negotiations about Francolor and that an agreement was reached. I know of no other plans.

Q. Was your office or any other branch of the RHM in charge of supervising the Francolor discussions?

A. That was under the chemistry department of our office to supervise this transaction and later to approve it. Whether there was any other agency which had authority over this matter I could imagine that perhaps the general referral for special problems had something to do with it. That would have been possible, but I do not know. It is certain that our chemistry department worked on the matter and finally approved it.

Q. Were you informed that Farben, in order to create the right psychological effect so that the French would meet their demands, relied

principally on the German military authorities in France?

A. I know only that I. G. Farben collaborated on the project with the military authorities in France. That is to say is a firm always carried out projects under controlled economy by informing the competent authorities, especially the authorities who will later have to make decisions on this question and approve it.

DR. SIEMERS: Just a moment Dr. Schlotterer. Your Honors, I object to further examination on the subject of the Francolor contract. The witness has said that he did not participate in these negotiations and that he had nothing to do with them. So it is a matter of pure speculation if he is asked about these matters. I did not ask any questions about Francolor after the witness said that he did not participate.

MR. SPRINGER: Mr. President, in the first place these questions are preliminary to a more fundamental question which reaches to a point of the witness's direct examination. We do not desire to disclose our purpose. We ask that you admit these subject to connection with the next several answers. Point 2 — Dr. Siemers himself took this witness into many matters of speculation concerning other departments of the Reich Ministry of Economics than the department of which this witness was in charge, and what this witness did know about any economic planning in France and the results thereof, if any, is certainly relevant within the direct framework of Dr. Siemer's own direct examination.

THE PRESIDENT: If the witness will confine his answers to matters of fact about which he has knowledge or matters of expert opinion which are elicited by the nature and the form of the question we will get along very well. This question he has answered we will not strike out. But we would admonish counsel to keep the interrogation into one or the other of the fields — either about what the witness knows or about matters of opinion which he is competent to express an opinion on. I may say further that if this is preliminary it would probably be safe for the Prosecution to go directly to the point about which you are concerned and I think you can reasonably assume that if it is competent material

the Tribunal will see the materiality of it.

BY MR. NEWMAN:

Q. Dr. Schlotterer, were you ever advised with respect to Farben's activities in acquiring participation in parts of the French dye-stuff industry and in shutting down other parts?

A. The success of the transactions -- that is to say Francolor for example, I have no information -- I received no reports and therefore I do not know or rather did not know before I saw the records what the agreement was.

Q. Now you will see a document which I would like to mark for identification NI 13567, and if you will please read a part.

THE PRESIDENT: If you are going to pass the document to the witness you had better give it an exhibit number for identification only and then we will have no confusion about locating it.

MR. NEWMAN: That is exhibit 1352.

THE PRESIDENT: Thank you.

BY MR. NEWMAN:

Q. Have you read this part?

A. Yes.

Q. Now, will you please answer again my last question which read:

Were you ever advised with respect to the results of Farben's activities in acquiring participations in parts of the French dyestuffs industry and in shutting down other parts?

A. You spoke about information before. That means to me some sort of report that these transactions were occasionally discussed and obviously discussed of course....

Q. Now tell me, did you speak to Farben's Paris representative Monsieur Roidre on this matter?

A. Yes.

Q. And will you tell us what was the result of this discussion?

A. I said here...I told you once before that Mr. Roidre, in Paris, in February, '44, told me that 51 percent was not on the beauty of this matter. "If this 1 percent had not been there, the whole thing would look different," and he said that his, Roidre's, opinion was that the French had been under pressure. That was the opinion of Mr. Roidre which he gave to me, and I told you that in an interrogation.

Q. Did he tell who exercised this pressure?

A. He did not say that any definite office or firm had exercised this pressure, but he spoke of the fact of German pressure, but he did not say who exerted this pressure. He did not know that—or at least he did not tell me.

Q. Would you just read what you said on December 17th, when you made this testimony?

A. Yes.

Q. Did you state at that time that Roidre told you this pressure was exerted by the combined work of I.G. Farben and the German military authorities in France?

A. That does not contradict what I just said. I said that. I told you of an over-all pressure, and I said that that was the opinion

of Mr. Reidre.

Q. Thank you.

DR. SIEMERS (Counsel for defendant von Schnitzler): Your Honors, if I understand correctly, the questions have been repeatedly asked which are about hearsay. I object. I didn't intend to interfere with every question; that is why I did not object immediately, but I would appreciate it if such questions about hearsay evidence; about what people told him, people from different fields which had nothing to do with Dr. Schlotterer, be no longer asked. I object to this question.

THE PRESIDENT: The objection is overruled. As we understand the situation, the witness stated in his examination in chief that he had no information or no knowledge of the transactions about which he is now being asked. It is proper for counsel for the Prosecution to remind him of statements that he may have made to test his recollection as to whether he has knowledge, and to test his credibility as a witness.

The objection is overruled.

DR. SIEMERS: Mr. President, to avoid any misunderstanding, I should like to say I do not recall that the witness said he had no knowledge, but he said he was not in charge of this matter, and I didn't ask him about it because I assumed that what he heard from third parties was of no importance. The important thing was whether he had dealt with the matter or not.

I just want to avoid misunderstanding.

THE PRESIDENT: Very well, counsel; we will not take time to search the record to see what the form of his answer was. He at least testified that he had no specific information about it, and, be that as it may, if the testimony now being inquired about does not contradict what he said before, there is all the more reason why the objection is not well taken.

The ruling will stand. Counsel may proceed with another question.

BY DR. NEWLAN:

Q. Dr. Schlotterer, you have testified that Funk, then head of the

Reich Ministry of Economics, was commissioned by Goering in 1940 to prepare plans for the economy of Europe after the German victory. Now, as Commissioner of the Four Year Plan, was Goering competent to give such an order?

A. He arrogated this right, referring to Hitler. That was rather customary.

Q. Did Goering or the Four Year Plan authorities take an active interest in the economy of the occupied countries during the war?

A. Yes.

Q. Is it now true that a number of the state secretaries of the R.W.M., such as Dr. Landfried, were regular participants in the so-called Generalrat (General Advisory Council) of the Four Year Plan until Goering established the Central Planning Board in spring, 1942?

A. That State Secretary Landfried was in the Generalrat of the Four Year Plan, I know. Whether the Generalrat held many meetings, I do not know, and what role State Secretary Landfried played there, I do not know either.

Q. Before going to my next question, I would like to briefly point to two statements you made today and yesterday. You have testified that it was the purpose of the New Order planning to accomplish a more ideal European economy in which the industries of a number of countries at war with Germany in 1940 would have no bitter feelings after the war. And you have also testified before the Commissioner of this Tribunal, and I would like to state that this was page 4625 of the transcript, that numerous Reich officials were gravely shocked when Goering announced to them in 1941 that Germany would follow colonial policy in the Occupied Eastern territories and that slave labor was to be re-introduced in the 20th Century. Now, my question is this: Did you believe that these same leaders of the Third Reich who initiated the colonial policy in the East as well as the slave labor program, which affected both the East and the West, were interested whether or not the leaders of industry in the formerly Occupied Western territories

and any feelings of bitterness after the war?

DR. SIEMERS: I object. Dr. Schlottorfer was a Prosecution witness on the subject which is now being brought up. That is the very point which has already been discussed before the Commissioner and which is in the record. I cross-examined the witness myself before the Commissioner. Consequently, I did not ask about these matters which referred to Dr. Schlottorfer's testimony as a Prosecution witness.

I was of the opinion that the Prosecution should not be allowed to bring up things from the previous examination. This is the exact wording of the questions and answers from the examination of Dr. Schlottorfer by the Prosecution in the direct examination and by myself in cross-examination.

If, of course, the examination before the Commissioner is to be repeated here, I should like an opportunity to participate.

THE PRESIDENT: In the view of the Tribunal, this question is not proper cross-examination of this witness with respect to the testimony which he gave in chief, and the objection is sustained.

BY MR. WEGMAN:

Q. Then my last question, as far as the New Order is concerned. Wasn't it clear to you that the economic policy of the Third Reich in the years 1940 and '41 was a European economy under the domination and general direction of Germany?

A. In my statements about the New Order I spoke of the attitude of the Reich Ministry of Economics and of the plans which the Reich Ministry of Economics worked out, together with the groups. Any intentions or plans which Hitler or Goering may have had on this question were not known to us at that time. I had to add here to what my Minister told me, and he held the point of view that it should be done in a decent way, so that I can answer your question by saying that at that time I did not understand these matters completely.

Q. You mentioned yesterday the case of Mr. Roth, the Jewish employee of Farben, in Austria. Do you know any details about the Roth case?

A. No. Yesterday I had —

Q. Do you know or don't you know the details of the case of Roth and circumstances under which he was dismissed?

A. I know what I testified yesterday—nothing more.

Q. Can you tell us whether or not the case Roth was tied up with the violation of foreign currency regulations in middle-European countries where Farber was allegedly implicated, and whether Roth was arrested in Hungary on this count?

A. I know nothing about it. I know only what I testified yesterday.

Q. Do I correctly understand you? You don't know—

THE PRESIDENT: Counsel, the witness has specifically answered your question.

Q. Dr. Schlottner, when did you become a member of the Nazi Party?

A. In 1928.

Q. Was this the first time, or did you join the Party for the first time in '23?

A. Yes.

Q. So you became a Party member—if I understand you—in '23—or did I misunderstand you?

A. No, you understood me correctly.

Q. Didn't you first say—in '28?

THE PRESIDENT: Now, counsel, if he said it, it is on the record and it will speak for itself.

Q. And when did you become a member of the SS?

A. In 1936.

MR. WELSH: No further questions.

THE PRESIDENT: Unless there is a request for further examination of this witness, we are about to excuse him.

Did you have anything further, Dr. Siemers?

RE-CROSS EXAMINATION

GUSTAV SCHLOTTERLE, Resumed

BY DR. SIEMERS (Counsel for defendant von Schnitzler):

Q You have just said on cross-examination that you talked to other firms about the New Order, but that you were not given any reports. You had approached other firms just as you had approached Farben?

A Yes.

Q Why was it that the other firms did not give you any written reports?

A I had the impression that not only on this occasion but earlier too that the other firms did not have the necessary scientific resources to make such reports. As I said before, Farben had an Economic-Political and a National Economy Department with good resources, and with trained workers, and that was no doubt not the case in other firms. On earlier occasions too we observed that we were not served as well by other firms as we were by Farben.

Q Thank you. Now I would like to clarify one point which arose, I believe, because you misunderstood a question of Mr. Newman's, and you let it go by without objecting. If I understood correctly, it was said that Goering founded the Central Planning Board, is that correct?

A I did not understand that so well. Those are things with which I had nothing to do, and I don't know them from my own experience.

MR. SPEICHER: Mr. President, unless there is some point, we will be glad to produce the order, if it is not already in the record; and I am certain Dr. Siemers has had access to it, if there really is any question as to by what authority the Central Planning Board was set up.

THE PRESIDENT: Dr. Siemers is interrogating the witness. If he desires to see what the witness knows about it, he is within his right.

Go ahead, Doctor.

BY DR. SIEMERS:

Q You do not know the details about the Central Planning Board?

A No.

Q You do not know that the Central Planning Board was founded by Hitler and Speer?

A No.

Q ...That there were even differences of opinion with Goering?

A I do not know that.

Q Thank you. How do you explain the fact that you are not informed about things that were as important in the economic field as the Central Planning Board?

A The Ministry of Economics had very little to do with the Central Planning Board. I believe that our minister was on it, but I must observe that toward the end of the war there was so much reorganization that no one knew his way around any longer. Whether the Central Planning Board was created by Hitler or by the Four Year Plan or by the Ministry of Armaments, I do not know, because everything was confused. I merely know that it existed and that our minister was on it.

Q Thank you; that is sufficient.

I now come to the record of the interrogation of Mr. Newman's of 17 December, 1947, Exhibit 1852. You have this document before you?

A No.

Q At that time, during the interrogation, did you say as you said today that the Chemistry Department of the Reich Ministry of Economics was in charge of the Francolor matters?

A Yes.

Q Mr. Newman asked you—

THE PRESIDENT: Just a moment... You may go along.

Q Apparently Mr. Newman interrogated you several times. The 17th of December was not the first time?

A Yes.

Q On the 17th of December he asked you: "Have you talked to the

Defense in the meantime?" Is that right?

A I believe so.

Q Do you know of that record?

A No, I do not have it.

Q I wish it could be given to you.

MR. SPEECHER: Mr. President, the protocol which has been translated and which will be offered later has not been mimeographed so we don't have copies for you. With respect to the question that we raised, we merely presented what we considered to be a prior, inconsistent statement that the defendant had made in another place. As soon as we do that and cross-examination comes, we naturally afford copies to counsel for the Defense. But I don't believe that that opens up the door to any of the other issues that may have been gone into in that interrogation. Unless the Defense wants to make this a part of their proof for some purpose, we would have no objection.

THE PRESIDENT: The interrogation has not reached the point where the Tribunal can pass upon its competency. As I understood counsel for the Defense, he was inquiring about a document. Have you located the document you wish to hand to the witness, Doctor?

DR. SIEGERS: Mr. President, it is the document that Mr. Newman showed to Dr. Schlotterer just now, which was offered for identification as Exhibit 1852.

THE PRESIDENT: Very well. The Tribunal now knows that the document has been handed to the witness.

Go along.

BY DR. SIEGERS:

Q Dr. Schlotterer, didn't you have this document before?

A I had it but then it was taken away from me again.

Q In German or English?

A In German.

Q You said that you were asked whether you talked to the Defense in the meantime. What was your answer that you gave at that time?

A I said that I had not talked to the Defense and that I had nothing to do with the Defense. That was at that time. I was a Prosecution witness.

Q Who was the person in charge of Francolor matters in the Chemistry Department?

A I cannot say exactly. I can only say that Dr. Muellert and Mr. Hoffmann were competent for such matters.

Q Is it true that you also said that the opinion was generally held that there had been no compulsion exerted on the French side, that it was a voluntary agreement between the French and the Germans?

A That was the general line of the Reich Ministry of Economics.

Q Is it true that you told Mr. Newman that he should question Dr. Michel, the military administration chief in France?

MR. SPEECHER: (rises from his seat).

THE PRESIDENT: Objection is sustained. The objection is sustained. The Prosecution asked him about a specific question and answer that he made in this statement, also marked the exhibit for identification and stated in open court that when the document was processed it would be introduced in evidence. Under those circumstances, it would be useless to go to the extent counsel is going to prove the content of the document. It will speak for itself when we get it.

BY DR. SIEKERS:

Q Mr. Newman asked you and you answered and spoke about Mr. Raidre, if I understood you correctly?

A Yes.

Q Who was Raidre?

A At that time he was introduced to me in Paris as a man who had something to do with I.G. Farben. I was told that he was a representative of I.G. Farben, but the person who told me was not a man I would consider to be 100 percent informed. I was merely reporting on this Paris business, and I merely reported what I was told at the time.

Q You stated of Raidre that he complained?

A Yes.

Q You also said that Raibre assumed over-all pressure?

A Yes.

Q Did he mean pressure inherent in the general political situation?

A Well, Raibre did not explain what he meant. He merely said "51 percent. That is unpleasant for France. We would not have done that voluntarily."

THE PRESIDENT: Counsel, it appears to me that it would be a waste of time to go further into that. There is no evidence that this man did or did not represent Farben, except what he said about it, and all the witness seems to know about the matter is what the gentleman told him. Now, that is getting into a pretty remote and speculative field to have probative value before this Tribunal, and in any event the circumstances are related in the document which will be evidence.

DR. SIEMERS: That is why I objected to hearsay evidence. This is hearsay and there are always complications. It is difficult to ask questions about such matters.

THE PRESIDENT: Then, counsel, in the interests of consistency you ought not argue with the Tribunal for sustaining your own view on the matter. So we are just holding you to what you say the proper practice should be.

BY DR. SIEMERS:

Q Did Dr. Michel negotiate with Laval about the Francolor agreement?

A This was reported to me. In the interest of the subject I merely told what I had been told because they were asking me about it. I can't tell you anything else.

Q Raibre told you this?

A Yes.

Q When was the Francolor contract signed?

A I do not know.

Q Do you not know that it was in November, 1941?

A I cannot say.

Q When was it agreed that the proportion would be 51-49 percent?

A I do not know.

Q Do you know that this was in January, 1941?

THE PRESIDENT: Counsel, the witness has made it clear to you that he does not know, and nothing would be accomplished by pressing him further on that score. He said positively that he does not know.

DR. SIEMERS: Mr. President, I was merely wondering because the witness said he didn't know it but he testified about it in the interrogation with Mr. Newman. I merely wanted to clear this up.

THE PRESIDENT: Very well.

BY DR. SIEMERS:

Q Then I have merely the question: Did you hold any high office in the Party or the SS?

A No. In 1933 and '34 I was Gau Economic Advisor in Hamburg, and after I moved to Berlin I withdrew completely from the Party and I did not hold any office; I was an honorary member of it. I exercised no office and I was not active for the SS.

DR. SIEMERS: Thank you. No further questions.

THE PRESIDENT: Anything further, gentlemen?

Then the Tribunal will excuse the witness. (Witness excused).

Call your next witness.

DR. SIEMERS: Your Honor, as I took the liberty of remarking yesterday I had merely asked to be allowed to examine two witnesses out of turn and asked Dr. Dix to wait with his case. I have now finished with those two witnesses, so that, as far as I know, Dr. Dix is now ready to continue with the presentation of Document Books.

THE PRESIDENT: Are you ready to take over now, Dr.?

DR. DIX: Rudolf Dix for Schmitz.

Mr. President, I am fundamentally an optimist and therefore I hope that Book II is available in English translation and will reach the Court by the time I get to it, especially since Judge Herrall was kind enough to tell me that it will probably be ready in the course of the afternoon.

THE PRESIDENT: Just a moment, Dr. Dix, until we check to see that we have our books ready here now.

Will the messenger get Judge Morris' Book I, please.

DR. DIX: May I begin?

THE PRESIDENT: Yes, you may go along and Judge Morris can look on my book until he arrives.

I don't know whether anything can be done about it, but the sound system is very, very noisy.

DR. DIX: May I begin?

THE PRESIDENT: Yes, Dr. Dix.

DR. DIX: First of all, I may say that the Prosecution has at many points mentioned my client merely in passing -- merely mentioned the name. I shall leave these subjects to my colleague, who is more directly concerned, and if necessary I shall clarify such points by inquiry.

Now, as regards the Document Book, I should like to remark that I have made a rather detailed index so that the Court will be able to see the subject of each document from the index, and if the Court is looking for evidence on a certain subject, this can be seen from the index.

The heading of Book I and Book II reads "Alliance of I.G. with Hitler." The first document in Book I is Document Number 4, an affidavit of Dr. Kalle. I offer this document as Exhibit Number 4.

THE PRESIDENT: Now, just a moment, Dr. Let's check with the Secretary's office to make sure we get started correctly on your series of numbers.

Is that right, Mr. Secretary?

The Secretary advises that is correct; that you have three documents in previously and this is Number 4.

You may go along, Dr.

DR. DIX: Three documents for identification. That is why I begin with Number 4.

The Court knows the name Kalle from the previous evidence. He is a veteran Farben man. You know him as chairman of the so-called Kalle Circle. The Kalle Circle was the group in charge of the political and the economic political questions in IG Farben. The affidavit, first of all, on page 2, deals with the interest of Farben in maintaining peace with respect to Farben's serious losses in the first World War, as far as foreign interests and patents were concerned. Subsequently Kalle describes how in his capacity as a member of the Reichstag and as a delegate of the German Peoples Party — Deutsche Volkspartei — in agreement with all the important men in leading positions of Farben, was in favor of Strossmann's Policy. He then describes the attitude of Farben especially and other branches of industry, too, toward the die hard Right Wing of heavy industry; the dispute between the management of Farben men like Hugenberg, Kirdorf, and Thyssen. He then says very precisely that all members of the Verwaltungsrat of Farben were opposed to National Socialism and that as he recalls, before the seizure of power, Farben did not contribute any financial support to the Party. Then he discusses the alleged alliance of Farben with Hitler, which has been mentioned here repeatedly; the question of Sudeten gasoline; and he expresses his conviction that he considers it completely out of the

question that Bosch, in view of his basic attitude, even considered collaborating with Hitler in order to realize his hydrogenation plans. Under No. 3 of the affidavit he deals with Farben's activity in connection with the so-called Arbeitsgemeinschaft -- Working Alliance and this term has been explained to your Honors by the witness Kastel, meaning the contractually established collaboration between management and labor. He then deals with the reasons for merger and emphasizes that they were not the ones which occasioned the American legislation to legislate against Trusts, but that they were primarily questions of practical economic considerations and profits and emphasizes that Bosch was outspoken enemy of monopoly; that it was quite opposed to the basic idea of Farben to maintain uneconomic concerns by keeping prices up or by this fusion keep unprofitable enterprises alive or to monopolize the world market by force.

I have now finished with the first document, Mr. President, I believe this would be a good time --

THE PRESIDENT: This would be a good time to take our recess.

The Tribunal will arise.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may continue, Dr. Dix.

DR. DIX: (Counsel for defendant Schnitz): The next document which bears document number 8 which I want to offer as Exhibit No. 51 is another affidavit of the Dr. Kalle mentioned previously. This affidavit deals in the first pages with the political attitude of Bosch and Duisberg.

By I remark that, even if these two gentlemen are not in the dock and they are not alive, they were such determining factors for the ideological and political attitude of Farben that it is impossible to do without describing their characters and attitudes. Please read these pages.

The affidavit further mentions the support of the Reich Association of Industries under leadership of Duisberg for the Young Plan which was fiercely opposed by the Right radicals and he mentions that the witness Kestl, who was examined here, was sent to Paris for the preliminary negotiations of the Reich Association.

He further testifies about the tension that prevailed in Berlin on account of the person of Duisberg and Bosch who opposed the Right radical wing of industry. Thyssen and Kirdorf. He also mentions the dismissal of Dr. Loy who was prominent at the time already which characterizes the then attitude of Farben who was later the leader of the Labor Front and which had attacked Farben because of its membership in the Aufsichtsrat, Werburg and Hagen who were Jews.

He describes further Farben's intervention by Duisberg for Hindenburg's re-election, who was Hitler's opponent and he describes briefly Bosch's relationship with the client. He calls it friendly and good and he clarifies that one could not believe the rumor to be true that Schnitz had intended in any way to push out Bosch or replace Bosch.

He then describes Farben's intervention for the Pan-European movement corresponding to the spirit of Farben. He furthermore describes the financial intervention for the internationally known democratic newspapers, "Frankfurter Zeitung". He mentions the considerable funds which were made available to

Stresemann for his policy of reconciliation and he further mentions the financial support which Forster granted to the other democratic sections of the press, especially the "Frankfurter Nachrichten" which stood close to the Deutsche Volkspartei.

He states expressly that the charge that industry as such had supported Chauvinism and militarism and thus furthered the creation of the National Socialist Party and its accession to power cannot at any rate be applied to Forster. He also describes the institution of the so-called Kalle-Circle and the Social Political Committee.

This is the essential contents of this document.

MR. SPEAKER: Mr. President, the Prosecution does not wish, either with respect to this document or with respect to a large number of the documents in this book, to attempt at this time to point out anything concerning their materiality, the weight that should be given them; and, because some of them touch upon some points which are clearly relevant, at least in some parts of the affidavit, we think it would be not saving of time to make any motions to exclude the entire affidavit on the grounds that large parts of it are incompetent.

However, with respect to this specific affidavit, there are two portions which specifically are so speculative and so remote from anything in the nature of proof that we feel obliged to point out that, without whatever worth it may be in the future, providing your Honors are in agreement with our understanding of the rules of competency in any legal system -- and I ask you to look at page 31 of the English copy, beginning with the paragraph on religious questions and then to pass down to the next paragraph which states that if Bosch had been in the United States then he would have been a great character of one kind or another and then I ask you to pass over to page 35 and 36 where we have the following statement, and this is only characteristic of a number of things -- but I ask your Honors to hear me for a moment on this one point:

Beginning at the bottom of the page: "I believe that I am acting in the

spirit of the deceased by expressing the conviction that Carl Bosch, were he still alive, would even now accept full responsibility for all measures taken under his direction."

Now, I am quite aware that Dr. Dix, with an age that is approaching 80 years of age, it was possible he was approaching some particular problem but this matter, as I am just pointing out --

(Demonstration of laughter in the dock)

I am afraid there must have been a translation error. Dr. Dix, I was referring to the affiant, Kalle. I am sorry.

That these matters are so much in the nature of speculation that the Prosecution feels obliged to request the Tribunal to strike them.

THE PRESIDENT: I hardly think it will be necessary, Dr. Dix, for you to comment. I suspect, if you would review this record and apply strictly the rules of competency, we would eliminate much so-called evidence that has been introduced in the trial of this case.

There are two ways of looking at the matter. I think Counsel can depend upon the discretion of the members of the Tribunal to distinguish between that which is competent and has probative value and that which does not. I think also that you all agree that we would waste very much valuable time if we entered upon a program of editing these affidavits. We have expressed views of that kind before and I may say I think that there was some objection along the same line when some of the affidavits were offered by the Prosecution and were presented to the Tribunal.

It will be the view of the Tribunal that it will ascertain and determine for itself whether or not there is surplusage in these affidavits when we come to consider them and insofar as the affidavits contain incompetent and immaterial matters we shall disregard it and look only to the meat of the affidavit.

Of course, if it should become apparent that an entire affidavit is totally devoid of probative value, then we would consider the matter of rejecting it but so far as these affidavits are concerned we think we would put our time to better use to let them come in the form they are with the assurance that we will undertake to eliminate from consideration those matters that are not competent and not of probative value.

I think in the interests of orderly procedure and the conservation of time that would be the better policy to follow.

DR. JEL: Mr. President, I ask that I be permitted to make a very brief statement. It is probably due to my 80 years that only during Mr. Sprecher's statements did I notice that he was speaking about a document that I had not yet offered; but it is true -- it is the document in line -- and what Mr. Sprecher has taken under his advisement, that is, the religious attitude of Mr. Bosch and the speculation what would have become of him had he been born in the United States, I would not have read into the record; but I cannot perscribe a man of the character of Buecher, whom I shall describe to you from my own knowledge very briefly what he is to write in detail. I can only give him the subject matter.

THE PRESIDENT: We have perhaps devoted as much time to this subject now as it deserves. The Tribunal has ruled and you may go along on the introduction of your documents.

DR. JEL: The next document, Document No. 6, will be offered by me as Exhibit No. 6. It is an affidavit of Dr. Hermann Buecher. I have known Dr. Buecher for more than a generation. Before the First World War he was with me in the Colonial Service and he gradually rose to his position as business manager of the Reich Association of German Industry via the Foreign Office and reached his position with the Farben as director general of the "A. E. G.", the General Electric Company. He remained in this position until the end of the war.

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from my own knowledge --

THE PRESIDENT: I am sorry, Dr. Dix, I hardly think that would be proper. I think I ought to warn you that it is commonly said in some places where we have had some experience in practicing law that when a lawyer undertakes to testify he is presumed to be in more or less of a desperate state for a witness and I certainly would not want to see you get yourself in that unpleasant situation. I think you better leave your own thoughts about what you know about the witness out of the regard and go on and tell us very briefly what the affidavit is and let it go at that.

DR. DIX: Thank you very much for looking after me so well.

The witness again describes on the first pages of this affidavit the Bosch's person which I ask you, please, to read.

May I then quote one passage from page number 5? There he says:

"If one speaks about a policy of the I. G. Farben industry it can only be termed purely economic. It was based on well organized scientific research, high technical ability and daring enterprise. Therefore, the realization of its plans lay in the future and it was most interested in a stable, peaceful development for every political complication must affect it disadvantageously in some way.

"It is, therefore, inconceivable to me that I. G. Farben should have condoned and conscientiously promoted Hitler's quest for power and conquest."

On the next page he also emphasizes the leading activity of Farben that I mentioned in the framework of the so-called Labor Community, the "Arbeitsgemeinschaft."

He then mentions Farben's activity as represented by Bosch aiming at strong support of Chancellor Dr. Brüning to prevent Hitler's accession to power. He further speaks about the first meeting of Bosch with Hitler which ended in a clash between Hitler and Bosch and where Bosch stated that Hitler was a quack. He speaks about the serious concern

which weighed down Bosch and his worry that what he had achieved for science and for humanity might be abused by Hitler whom he considered the power of evil which might be used for the disaster of humanity. He further describes an oppositional speech which Bosch delivered during a meeting of the Vorstand of the "Deutsches Museum," the German museum. The consequences of this oppositional attack of Bosch are going to be treated in the next two documents.

This man further explains that Bosch died as a careworn and desolate person.

On page 10 of the German he confirms Dr. Krauch's statement about the reasons which motivated Farben, through Bosch, to delegate Krauch into the Four Year Plan; that that was done in the belief that Krauch might exercise a moderating influence upon the course of developments.

The next passage about the speculation that Bosch had he been born in America I shall not read, and then, on page 12, I should like to read two small paragraphs literally. I quote:

"Hitler despised the industrialists and the intellectuals, for he knew that it would not be their help which would enable him to conquer Germany, but only the support of the masses of unemployed and the economically weak.

"It is known also that industrialists of reputation and influence placed themselves on Hitler's side, but Carl Bosch was not one of those, nor, as far as I know, were Duisberg, Kalle and other members of the Verwaltungsrat of the I.G. Farbenindustrie A.G."

He then goes on to speak about the reasons for the consolidation. I don't have to explain that in detail because they coincide with what Kalle has already stated and with what I have already stated for the record.

On page 14 I should again like to quote one passage of some decisive importance. I quote:

"The I. G. Farbenindustrie A. G. had existed for only a few years when Hitler came to power. If a continuous democratic policy been followed, in the permanence of which Farben must have the greatest interest, developments would have taken a very different turn. Now, however, due to the political and military importance of nitrogen, gasoline and rubber, Hitler paralyzed the firm's competence to make its own decisions. It was forced to drift into the channels directed by Hitler, just like the rest of the entire Germany economy.

"The decisive years for Germany and thus, also for the German

economy, was the period immediately prior to the Hitler regime and the first two years after the so-called seizure of power. During the first period, the political structure of Germany failed. That is, the system of parties."

And I shall skip the next few lines in the quotation and continue three lines further down.

"The masses of unemployed and the organized workers who had deserted their leaders were marching behind Hitler during the second epoch. Today nobody will admit this any more. A system such as was Hitler's could only succeed with masses inspired with fanaticism and not with the intellectual classes of the nation. One cannot imagine that Hitler - relying on a few hundred or a few thousand industrialists - could have achieved even the least success. Whatever happened during later years was bound to follow, in view of the mistakes previously made.

"In those decisive years between 1928 and 1934, Carl Bosch and Duisberg, as well as the above-named members of the Verwaltungsrat of the I. G. Farbenindustrie A. G., were fully responsible for the enterprise."

I shall conclude the reference to the contents of this document by quoting the last short paragraph because it refers directly to the defendants in the dock. I quote:

"If the gentlemen now on trial in Nurnberg are guilty of crimes individually - which I am in no position to judge - then they must be punished. However, during the time when the most important decisions were made in Farben and when the firm was still able to decide on its own, they had no decisive influence on the course of events."

JUDGE HERBERT: Dr. Dix, I wonder if I might interrupt to make just a personal observation and, entirely as a suggestion in the interests of conserving them? It does occur to me that in the presentation of these documents that you're perhaps going into much more detail than is warranted. You will recall that when documents were presented by the

Prosecution, the Tribunal repeatedly indicated that a rather brief summary, with merely indications of the purpose of the document, would ordinarily suffice. I think I can say that we certainly will study and read these documents very carefully and, particularly in this case where you have such a full and descriptive index, just as a suggestion in the interests of saving time, I am wondering if the full extent of the running comment that you're giving is necessary in this instance.

DR. DIX: Judge Hebert, if I had been fortunate enough to be able to treat the next three documents I would have obviated your apprehension that I would become too wordy. I only read the most essential contents, but I shall stick to your suggestion. Please take into account, gentlemen, that I cannot call my client at the present time into the witness stand. Therefore, many things which would ordinarily become plastic by my client's taking the witness stand which now have to be substituted for by my presentation. Therefore, please understand if I exceed the scope sometimes.

JUDGE HERBERT: I think that we understand that fully and there's no disposition to be arbitrary about it at all. I merely called it to your attention. Use your own good judgment.

DR. DIX: The next document, which bears document number 7, shall be offered by me as Exhibit #7. There also the affiant discusses the subject of the alliance of Farben with Hitler and it is again an explanation about the humane and pacifistic attitude of Carl Bosch. I ask you to read this document, please.

The next document, bearing #6 as the document number, will be offered by me under the same number as an exhibit. It is an affidavit of the Director of the Patent Department of Farben, a certain Mr. Holdermann, who speaks in particular about the foundation of the industry of synthetic ammonia by Carl Bosch and again about Bosch's personal attitude against militarism, Chauvinism and anti-semitism.

The next document, #9, I offer as Exhibit #9. It is an affidavit of the business manager of the Association of the Friends of the

Heidelberg University and it again discusses the personality of Carl Bosch in very brief but vivid form.

The next document, #10, will be offered as Exhibit #10. It is the affidavit of a member of the Vorstand of the Deutsche Museum and describes the consequences which the critical statements had which were already described in the Buecher affidavit, which Carl Bosch delivered at this particular time. You will see from this document that the entire Vorstand had to apologize, that Bosch had to resign, and in the next document, #11, which I offer as Exhibit #11, the walk to Canossa which the Vorstand of the German Museum had to go to the Bavarian Nazi Prime Minister Siebert by writing a letter asking his pardon, the wording of which, however, is much to disgusting for me to read it to you here.

The next document, #12, with the same exhibit number, which I shall not quote at all, is an affidavit of Duisberg's daughter, a Mrs. von Veltheim, about the tension and disagreements of her father Duisberg with that wing of the Ruhr industrialists which I previously called the dishonest radical wing of the industrialists.

The next document, #13, will be offered as Exhibit #13 to the Tribunal. This is an affidavit of the head of the economic secretariate of Geheimrat Duisberg. Here again the witness testifies that Duisberg opposed National Socialism; about the fact that Duisberg personally resigned or was dismissed from almost all of his positions after the seizure of power by the National Socialists and the embarrassing way, without paying any attention to this man in public life by the Party agencies.

The next document, #14, which I offer under the same exhibit number to the Tribunal, is an affidavit of the same secretary who only assures us that the exhibits offered from A through C, correspondence between Duisberg and Kirdorf, is authentic and that the contents of the other letters which bear this exhibit number and which are submitted in the appendix, however, do not deal with political opposition to any one but deal with the care which Duisberg granted to political

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persecutees and, among others, to the husband of the Swedish woman
Braendstroem, well-known as a benefactress.

I can now turn from Document No. 14 and pass on to No. 15 which I offer as Exhibit No. 15. This is an affidavit of the same person, Mrs. Eritzer, about the identity of the handwritten drafts of a newspaper article by Duisberg, a proof of his authorship of this article. On the occasion of the election of the Reich President, where he expressly rejected any form of radicalism whether it came from the Left or from the Right.

Document No. 16, offered by me under the same exhibit number, is along the same line. It is a circular of the Reich Association of German Industry in which its members are asked to vote only for those parties loyal to the Constitution. This circular is the same sort of notification of the Reich Association already described by the witness Kastl, as is the speech of Silberberg, and Lemmer. In order to express this description tangibly, I am now offering Document 17 as Exhibit No. 17 which is the last document in my book. It is obituary for Geheimrat Duisberg, written by an Englishman. I see that Mr. Sprecher is appearing at my right. I state expressly that if the Tribunal does not want to read this obituary for academic reasons, I shall not read it at any rate with the exception of the last sentence which states

MR. SPEECHER: (interrupting): Before anything is read from the document I suppose it would be well to point out that in our view there are two grounds why it is completely inadmissible. Firstly, it is an obituary from an American newspaper in the year of 1935, certainly not under oath, and it is incompetent to prove any of the facts, if any, stated therein and, secondly, assuming its competency or its admissibility, apart from the first objection, it is clearly irrelevant for any possible purpose in the case.

DR. DIX: I prefer withdrawing this document.

THE PRESIDENT: Very well. That concludes your presentation on your Book I.

DR. DIX: Yes, Mr. President.

THE PRESIDENT: Now, has your Book 2 arrived, Dr. Dix?

DR. DIX: I hope so, Mr. President. I cannot tell.

THE PRESIDENT: Our copies have not been delivered to us. I am wondering if it would disturb you too much to go to Book 3 and then fill in with 2 when it is available, or to go to your other volumes?

DR. DIX: Mr. President, even if it would disturb me very much I should be pleased to do this favor to the Tribunal and would turn to the documents dealing with Schmitz personally, but my colleague Gierlichs tells me that the document book is supposed to be on the way. It is supposed to have left the office and be on the way here. I am not a prophet. I don't know how long we'll have to wait. Perhaps two or three minutes. I should be grateful because it would interfere with the presentation of my case.

THE PRESIDENT: We have a note from the Secretary that our page has gone to see if the book is ready, so we'll just sit by for a minute or two and perhaps the books will arrive.

DR. DIX: Very kind of you, Mr. President.

MR. SPRECHER: Mr. President, may I be excused from attendance in the hearing so that I can check to see what happened to any possible copy that any one intended for the Prosecution?

THE PRESIDENT: Yes, we'll wait for you too.

Did you learn anything, Mr. Prosecutor?

MR. SPRECHER: No one in my office had heard of the document book yet, but Dr. Gierlichs is putting on a frantic search and is making some telephone calls.

THE PRESIDENT: Very well. We'll wait a little longer.

I'm happy to report that we have the book, Dr. Dix.

DR. DIX: Document Book 2 for Schmitz also deals with the subject of the alliance of Forben with Hitler. Before presenting Document No. 16 which would get Exhibit No. 17, may I say to the Tribunal that it is an excerpt from Storchert's book, and that I expect Mr. Sprecher to come up to

the podium because, during an earlier part of my presentation of evidence, he already objected to any reference to parts of this book. In such a case, if this were so, I would ask the President to permit me to make a brief statement why I consider these excerpts relevant and formally admissible.

MR. SPRECHER: First of all, must a point to keeping the documents in order, Mr. President. Even though Dr. Dix did withdraw Schmitz Exhibit 17 upon my objection, I suppose that it should retain the exhibit number for identification and that the document now under question, Schmitz No. 18, should become Schmitz Exhibit 16. Is that satisfactory, Dr. Dix, so that ---

DR. DIX: If it is agreeable to the Tribunal, certainly.

THE PRESIDENT: That's very well. Then we will mark Dr. Dix's document 17 as marked for identification only with a note that he does not intend to offer it. That will keep the record clear and maintain the sequence of your numbers, Doctor.

MR. SPRECHER: Mr. President, I do make the objection to excerpts from this book or any part of the book on the ground that it is quite incompetent. It is a book published after the collapse of the Third Reich. I have been informed informally that it was published in Switzerland. I haven't seen the document until now, of course. But it is, by its very nature, a book on opinion and analysis by the author as its title indicates - "How was it all possible?" It's the kind of thing which at most, it seems to us, might be mentioned in passing in an opening statement, provided the author were some one of some importance in the case, but it is not competent evidence any way at the present time. If this particular person had any particular definite knowledge of any competent facts then, at least, he would have to have an affidavit to give some credence to anything he might have to say.

THE PRESIDENT: We'll hear you, Dr. Dix.

DR. DIX: Before answering Mr. Sprecher's statements in detail, I should like to say some words about the person of this author; if I had had the honor to know you gentlemen of the Tribunal before you made your trip over here from America, I would have certainly permitted myself the opportunity to advise you gentlemen to read this book because it is an admirable description of the very complicated social and political development in Germany.

First of all I want to correct the statement of Mr. Sprecher that the book was not written until after the collapse, but it appears it was published after the collapse, not in Switzerland but in Sweden. The book, and especially the passages quoted by me, do not contain any analysis, but descriptions of facts observed by the author himself. He makes the same statements as were made by the witnesses Kestl, Lammers and von Reumer who testified here.

I cannot see why a description of facts, and also statements of opinion should be any worse, even if the book had been written after the collapse. The more distance one has from events, the better one is able to judge them. I was informed that the author's political attitude is somewhat on the left, between Democratic tendencies and Social Democratic tendencies, but the best witness and the best advocate for the book is the book itself.

The short passages quoted by me, whose identity with the corresponding parts in the book have been testified by me in my capacity as counsel, - or my associates did so, - the fact that this book itself and the passages quoted from it, give the best testimony on its own behalf.

Therefore, please permit me to offer the passages from this book and to read them only in parts and in excerpts.

THE PRESIDENT: Go ahead, Mr. Prosecutor.

MR. SPRECHER: I have been trying to think of any comparable document that has ever been accepted at any time in the history of the Nurnberg trials. I can recall none, and if Dr. Dix knows of

something different, I think it might be important.

There are many conclusions in this document, which is certainly not under oath, and is not of a character which at the time gave any knowledge to these defendants or anybody else in Germany concerning what was appearing.

Apart from the incompetency, because it is not under oath and contains many matters of opinion, I also would have further grounds with respect to relevancy which, if you are in doubt on the first ground, I would like to argue on the other grounds.

THE PRESIDENT: Just while you are on your feet, Mr. Prosecutor, may I take the liberty of calling your attention to page 6 of the document. After stating that Dr. Lammers, whom we recall was a witness here, was a member of the Supervisory Board of I.G. Farben, member of the Directorate of the Reich Association, and member of the staff of the League of Nations delivered a lecture on the 24th of June, 1932, there are quite a number of quotations and summarizations of what he said.

Would that not be calculated to corroborate his testimony here, and even aside from that, was he not an officer and had such official connections with Farben, that the defendants should have the benefit of what he publicly said at that time, as bearing upon the policies with respect to which you are trying to bind them here?

Now conceding that there may be many parts, even of this excerpt that are outside of the pale of that observation, what is your thought about the admissibility of that?

MR. SPRECHER: My thought is very plain, that this is an incompetent way of attempting to bring any facts before your Honors. There is nothing in the nature of any assurance that this is proper.

THE PRESIDENT: Now just in that connection, is there anything different than in bringing Mein Kampf to show what Hitler's designs and plans were?

MR. SPRECHER: Indeed, and a very great difference.

THE PRESIDENT: In what respect?

MR. SPRECHER: This book is published by a private person, and it purports to make certain quotations from certain speeches. That, assuming those quotations are correct, would be the most competent possible part of the document as offered.

Now if those speeches were made and Dr. Dix has no other way of finding material that corroborates what Dr. Clemens Lammers testified to on the witness stand, then I would not be a bit surprised but what the Prosecution would be very willing to come to a stipulation with Dr. Dix on that limited point. But there is no showing made that there has been any attempt, with respect to such material, to get what is at all competent evidence.

Now, with respect to Mein Kampf, Mein Kampf was circulated in Germany during the years of the Nazi era, and long before by the hundreds of thousands, and it was so stated in the IKT decision, where it was mentioned that the book Mein Kampf was no ordinary book. What is more, the press in Germany became a controlled press, and was used for disseminating information at the time, and I would say these were contemporaneous documents which went to what was going on and what knowledge people had about what was going on.

This is a book of opinion, published after all of these events, not even in Germany, and no showing as to who the author was. He is not under oath.

THE PRESIDENT: How do you reconcile that with the showing of what was the state of opinion by some documents that were offered by the Prosecution of what were matters of general knowledge in Germany? I am not speaking now of the book, but I am speaking of the quotation that I have referred to, of the speech of one of the officials of I.G. Farben.

MR. SPRECHER: Well, your Honor, I was not informed of that. I do not recall Lammers' testimony that he was an official. I understand he was an adviser, but be that as it may, if that is the only

proof which Dr. Dix could bring that Lammers made that statement, it might be in order, but this is a book published in Sweden, as we are informed, by a man who has a definite point of view, and there is no showing that Defense counsel has made any attempts to get the speech itself.

We are in no position to judge whether these excerpts have any relation to other parts of the speech.

THE PRESIDENT: I have the very definite feeling that if we had strictly enforced the best evidence rule, from the beginning of this trial, there might be quite a considerable volume of evidence that is before us that might not have gotten here.

MR. SPEECHER: Well--

THE PRESIDENT: Just a moment, please.

DR. DIX: May I add one sentence, Mr. President? May I just say one more sentence, Mr. President.

THE PRESIDENT: Very well.

DR. DIX: I do not want to repeat what I have said, but to point out merely that in my recollection, - and please investigate whether I am right, - the Prosecution submitted von Hayden's book, "The Generation of Irresponsibility", and quoted something during its presentation of evidence. I mention von Hayden. I could have also mentioned Goebbels, Goebbels Diary, although I must admit in that case that Goebbels' Diary is the opinion of a politically responsible person.

I shall try to follow Mr. Spracher's train of thought, but in Hayden's case, certainly not.

A book by Zischka, or something like that, entitled "Scientific Monopolies", was also quoted by the Prosecution. I should appeal to the Court's liberal attitude which has been frequently expressed by the Tribunal, and which has made it possible for the Defense, - since formally a lot of documents were objectionable when the Prosecution submitted their documents, - when the President said that a certain

proof which Dr. Dix could bring that Lammers made that statement, it might be in order, but this is a book published in Sweden, as we are informed, by a man who has a definite point of view, and there is no showing that Defense counsel has made any attempts to get the speech itself.

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amount of leeway should be granted.

In regard to Lammers' speech, if Mr. Sprecher says that he did not remember that I had introduced this speech in any way, then I say that Lammers was here as a witness, and that I complied with the requests of the Tribunal, and of course I did not have Lammers repeat the text of his speech, but this is a good chance to find out what the contents of his speech were, and it is typical for a representative of Farben, in the widest scope, - for he was closely connected, perhaps more closely than any official.

THE PRESIDENT: The Tribunal is ready to rule.

The motion will be sustained, -- the objection will be sustained in part and overruled in part. The Tribunal will admit in evidence that part of the Exhibit identified with the ellipsis on page 6 of the English Document book, and I may say, relating to the Lammers' speech, and continuing through to the end of the paragraph next to the last on page 11, and will consider the parts of that excerpt which quote or give a summarization of the Lammers speech, and will ignore anything else in that part.

The objection to the introduction of the remaining part of the document is sustained.

DR. DIX: I conclude the presentation of this document because the parts admitted by the Court are better read than listened to.

I believe, Mr. President, this would be the appropriate time to take the recess.

THE PRESIDENT: The Tribunal will at this time arise until 9:30 tomorrow morning.

(Tribunal in recess until 0930 hours January 28, 1948.)

Official transcript of Military Tribunal VI in the matter of the United States of America against Carl Krauch, et al, defendants sitting at Nurnberg, Germany, on 28 January 1948, 0930, Justice Curtis G. Shook presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI.
God save the United States of America and this Honorable Tribunal.

There will be order in the court.

THE PRESIDENT: You may report, Mr. Marshal.

THE MARSHAL: May it please your Honors, defendants Krauch and Hoffmeyer are absent from the courtroom, sick.

THE PRESIDENT: Is the defendant Schneider present? Is his counsel? Dr. Beettcher, I wish you would speak to the counsel for the defendant Schneider with reference to an order that the Tribunal issued last evening excusing him because of the illness of his mother, and ascertain if that matter has been taken care of.

Are there any announcements of any general or great importance this morning? If not, Dr. Dix, you may continue.

DR. DIX (Rudolf) (counsel for defendant Schmitt:)

Your Honors, I had completed the first document in Book 2, which deals with the subject of the alliance of Farben with Hitler, and I now come to the second document in Book 2, Document No. 19. Before submitting it, I have the following to say about its admissibility and relevance. The book of Hayden entitled "Adolf Hitler—the Age of the Lack of Responsibility" is an internationally known book and I think it has been recognized too while the book by Stachert which has been objected to by the Prosecution has just been published recently; I also think I recall, and I hope I am not wrong, that the Prosecution too has cited from this book.

MR. SPEECHER: If Dr. Dix thinks he is not wrong about that, I would like to have the citation and where we did cite it. He may be right, but I would like to know more.

DR. DIX: I shall not bring in this remark, or rather I shall ask that it be treated as not having been made, and I may take the liberty

when I have found this place in the transcript to come back to it later.

My brief excerpt contains two findings of the factual nature, that is, facts, in reference to the relationship between Farben and the assumption of power by Hitler. These are the reasons why I have taken this document into my book, and I now offer it as Exhibit No. 19.

DR. PROCHER: Pending the inquiry, we would merely like to make a note for the record so that we may later object. It is not a contemporaneous book of the Nazi era in the sense that it was published in Germany subject to the press regulations and thereby put out with the approval of the "Propaganda" of the National Socialist Labor Party.

THE PRESIDENT: Very well. The Prosecution may revert to it later if they now fit.

DR. DIX: The first note is on the found at the end. It reads: "The three great industrialists--"

MR. SPENCER: Mr. President, where a document is only tentatively allowed until the matter has been decided, and particularly since I have withheld my objection because Dr. Dix said he would make some inquiry along this line, wouldn't it be preferable if there was no further comments on the matter until that point had been decided?

THE PRESIDENT: The Tribunal will mark the document as offered as the Exhibit 19 of the defendant's exhibits and let the matter stand in abeyance until the Prosecution concludes whether or not it does desire to press its objection, and also to afford counsel for the defendant a further opportunity to support his offer.

You may pass on to the next document at this time, Dr. Dix.

MR. DIX: Mr. President, I think I understood you correctly that the Prosecution later and in any case will have the right to raise objections. That was my point of departure.

THE PRESIDENT: That is true, but here you have more than that; you have notice that the Prosecution may object, and under the circumstances we think it only fair that the time of the Tribunal be not consumed until the Prosecution has decided, and we will grant you,

Dr. Dix, further opportunity, if there is further objection, to show us what the document contains or to supplement your showing as to its competency. We have marked it as objected to and marked for identification so it will be notice to us that the matter is in abeyance, and if the Prosecution does not see fit to object, you may later call our attention to the contents of the document. If the Prosecution does object, we will hear both of you.

DR. DIX: Then I shall not quote now and I shall go to Document No. 20, which I submit as Exhibit No. 20. This document has already been submitted in the Flick trial as Exhibit No. 20. The document contains identified newspaper articles which contain reports about the conference of the Duesseldorf Industrial Club, in January, 1932, and the speech which Hitler made there. The newspapers quoted here are of a specially Democratic nature and they show that this speech by Hitler before these industrialists who were present at this conference did not find any support, but was more or less rejected. I have reference to the excerpt from the Cologne newspaper "Kölnische Zeitung" where it says that the Duesseldorf Industrial Club and the industrialists would be done an injustice if one would speak of an impression which the statements of Hitler were supposed to have made. And from the Berliner Tageblatt it says that the speech had made an unfavorable impression, etc.

Under the next document, No. 21, offered herewith as Exhibit No. 21, you will find an affidavit by the Herrgossessor Reusch; he is the son of Conrad Reusch, the general manager of the concern Gute Hoffnungshütte, who lived in Germany during the Third Reich and who was known to be on the black list of the Nazi regime. His son was also on the black list.

MR. SPRECHER: Mr. President, it seems to me we are having an awful lot of comments of counsel about witnesses, and these things have to be proved. If Dr. Dix wants to take the witness stand, I will cross-examine him.

THE PRESIDENT: We shall not take up the time of the Tribunal with any such procedure as that. Counsel for the Prosecution is correct, and there is also another aspect of the problem and that is: Everything that is said in this courtroom has to be recorded, translated, typed, and mimeographed--and in two languages. Now, gentlemen, as much as you can refrain from superfluous remarks, you make for a better record and for a conservation of time. The Tribunal does not and will not consider the voluntary statements of counsel that are not supported by evidence. And we trust that you will handle this in a direct and expeditious manner--and this applies not only to Dr. Dix but to every member of counsel in this courtroom.

You may go along, Doctor.

DR. DIX: Your Honor, of course I shall observe this rule by the Tribunal. I merely thought it might be of value to the Tribunal to make a few brief observations about the personalities which the Tribunal does not know. But, of course, I shall comply with your wishes.

This document contains the confirmation that it was not the leaders of the industries who were of a positive attitude toward Hitler or even supported him, and I refer the Tribunal especially to the last two sentences of this affidavit, in connection with my remark in my opening statement that in such times as these it was customary and human to look for scapegoats.

Document No. 23 which follows and which is offered as Exhibit No. 23--rather (Exhibit) 22, have also been offered in the Flick case, there as Exhibit No. 81. This is an affidavit of another member of the board of the Reichverband of German Industry, Mr. Imeller-Erlinghausen, which has the same content and treats the same subject matter in the same sense as the preceding affidavit of Reusch did, and which lists the names of those industrialists who were definitely opposed to National Socialism, among them Bosch and Lammere, who has been examined here as a witness.

The next document, No. 23, is offered as Exhibit No. 23. It is an affidavit by Prof. Barnbold who belonged to the board of directors of Farben from '26 to '31. It is concerned with the initiative on the part of my client in seeing to it that the affiant would join the cabinet of Bruening. I ask that this document be read.

The next document, No. 24, is an affidavit of Ernst Pfeiffer about the financial support which Farben gave the so-called Center Parties, i.e. the "Zentrum" and the German People's Party, etc., before the assumption of power; that is, the so-called period of struggle. Likewise, it is concerned with the financial support of the policies of Strossmann on the part of Farben. May I note in this connection that now I am only discussing the political contributions before and after the assumption of power?

It is my intention to treat the whole subject of contributions in a supplementary volume divided up into political, social, representative, etc., contributions. That is, the subject of contributions as a whole.

The next document is Document No. 25 and it is offered as Exhibit No. 25. This is an affidavit by Herr Kalla who has been frequently mentioned here in which he confirms the essential statements of Herr Pfeiffer in the preceding affidavit.

The next document, Document No. 26, is offered as Exhibit No. 26. It is an affidavit of Dr. Guenther Gehrocke, who was presiding over the Granium of the so-called Vereinigter Hindenburgausschuss which prepared the re-election of Hindenburg. In this document the activity of Geheimrat Duisberg as an exponent of Farben is treated, and he also concerns himself with the contribution of Farben to the amount of one million marks. I may also point out that at the end of this statement the affiant mentions the courageous intervention against Hitler which Duisberg took in a criminal proceeding.

The next document, No. 27, which is offered with the same exhibit number, is another affidavit of the above-mentioned Herr Pfeiffer, this time about the financial support of the Democratic middle class press, especially the

Frankfurter Nachrichten, before and after the assumption of power. This shows that the contributions amounted to more than 500,000 marks. He also mentions that he was the personal secretary of Herr Kalle, who has already been mentioned and who was in charge of this field in Farben.

The same document also mentions the financial support of the Frankfurter Zeitung, the significance of which is certainly not necessary to mention to the Tribunal here.

The next document is an affidavit of a Dr. Hoidorff, who has been active in the chemical industry since 1906, first with the Badische Anilin & Sodafabrik, and who later became head of the Patent Department.

As the affidavit shows, he mentioned the support of the Einstein donation, the Kaiser Wilhelm Institute by Farben. I ask that it be read.

THE PRESIDENT: Dr. Dix, you omitted to identify your document. I assume you are referring to Document 28, and that you desire that it be Exhibit 28?

DR. DIX: Yes, Exhibit 28. I beg your pardon.

The next document, No. 29, which I offer as Exhibit No. 29, is a supplement to the Prosecution Document, from the diary of Goebbels. I am submitting this because in the excerpt submitted by the Prosecution the diary notes of the 8th of December are contained, to be sure, where Goebbels speaks of the emptiness of the cash registers and of the worries, but which does not contain the diary entries after the assumption of power of the 20th of January, and which reads as follows—this is page 2 of the document: "Now it is easy to conduct this fight because we can use all means at the disposal of the State. Radio and press are at our disposal..." And the last sentence: "And there is no lack of money either, this time."

The next document is Document No. 30, offered as Exhibit No. 30. It contains an excerpt from the interrogation of Kjeller Schacht in the Flick case. Since Schacht was not able to appear as a witness before this court because of reasons of health, I took the transcript of the testimony of Schacht and introduced it into my document book, the testimony, that is, which is concerned with the subject about which I wanted to examine Schacht

as a witness here.

He describes the incidents in the gathering of industrialists in which the well-known contribution of 3,000,000 marks was decided upon. Then he makes the statements which were so calming to the industrialists given by Hitler and Goering. He emphasizes especially the fact that at that time it was not a matter of a National Socialist cabinet but a coalition cabinet consisting of "Deutschnationale", The German People's Party and the National Socialists. He also points out the facts which were interesting for the election, that whereas in November, when Reichstag elections had taken place, Hitler had lost 20 seats to the Communists, in the March election of 1943, after he was in power since the 20th of January, he regained these seats from the Communists, these 20 seats, and thus the Communists lost these 20 seats.

He emphasizes the fact that this sum of three million marks was furnished for the benefit of three parties and that a sum of three million marks had no significance for the success of the election at that time, then all the more because six hundred thousand marks were left over so that in the election only two million four hundred thousand marks were used. He emphasizes that Hitler could have easily raised the sum privately and that, therefore, the amount of the sum had no significance for the election or the success of the election.

The next document is Document No. 31 and is offered as Exhibit No. 31. It is an affidavit of Hermann Beseler, the office chief in the control Board of Farben, about the members of the Board of Directors appointed since the year 1933. He shows hereby that during the Third Reich no member of the Vorstand was appointed who came from the outside or who could be considered in any manner as a representative of the Nazi Party. In all cases it was a normal promotion of people who had been in the Farben service for many years. In accordance with this affidavit and in reference to the Vorstand of Farben, the same Mr. Beseler in the next document, Document No. 32 offered as Exhibit 32, gives a list of these people elected to the Aufsichtsrat and he shows that in the matter of the Aufsichtsrat the same is true as was shown in the case of the Vorstand in the preceding document, namely, that no representative of the Party was taken into the Aufsichtsrat during the Third Reich; rather that the whole Aufsichtsrat elections were handled organically and as had been customary either by transferring from the Vorstand to the Aufsichtsrat or on the basis of business or family connections of the founders of Farben, or of the firms, through which larger Farben was founded. He says that even two years after the assumption of power in the year 1933 a Jew was taken into the Aufsichtsrat.

As for the next document, No. 33, I call the Tribunal and the Prosecution an explanation for the admission of this document. The document contains an utterance of Winston Churchill from the year 1938 in an open

letter. I shall not yet give the contents of this letter because I am expecting an objection by Mr. Sprecher, but in order to be brief, I would just like to say why I consider this document is relevant. I want to prove by this that if a man such as Churchill would say this about Hitler in the year 1936 or rather would write this to Hitler, which is contained in this document, how much less could one expect these men here to recognize the bad intentions of Hitler? That is the reason why I offer this.

MR. SPEECHER: Do assume that it is marked as Schmitz's Exhibit 33 for identification?

DR. DIX: 33. Perhaps the interpreter can speak a little more loudly. I have trouble hearing her. I have not yet offered it. I have just announced that it will be submitted, and I have given the reasons why I consider it relevant in order to prepare its admission and so that Mr. Sprecher might say something about it.

THE PRESIDENT: We will hear the objections if there are objections.

MR. SPEECHER: Mr. President, this is an exceedingly indirect way in order to attempt to bring in some statement which a very famous man is alleged to have said. Even the document itself says that Churchill's open letter to Hitler contained phrases "such as this one". I know of no attempt by Dr. Dix to attempt to find out whether or not Winston Churchill did write a letter to the London Times. It would be a very simple matter to make an application for any letters of Winston Churchill which were published in the London Times, which were addressed to Hitler. I am rather certain there weren't very many, and it would be very easy to find out.

THE PRESIDENT: Now you are not, are you, conceding that if the letter is found it will not be objected to if it is offered by Counsel?

MR. SPEECHER: I am objecting to the competence of the book from which an alleged paraphrasing of a remark by Churchill is made. I don't object to it because it is not the best evidence. I object to it because it is no evidence at all and there are alternatives if any such remarks are made which are certainly available to Counsel, and I might suggest that

since it is a rather important matter with respect to the prestige of a very great man that the Secretary-General upon proper request could very well undertake to find out whether or not there is anything in this beyond a surmise of some German who wrote in 1946 a book of opinion.

THE PRESIDENT: Now, Counsel for the Prosecution, I am concerned about getting your viewpoint. If a search produces the letter referred to, and the letter is offered in lieu of this exhibit, are you withdrawing your objection as to its competency?

MR. SPECK: Then the question would be one of relevancy and I still think that there is no relevancy.

THE PRESIDENT: Well, that is another matter. In other words, I thought it only fair to Counsel if you put him to the trouble of a search and he produces it and then you object on another ground. You shouldn't do that. That wouldn't be right, but now if you are objecting to the whole subject matter as being irrelevant -- by that I mean to say an alleged expression of Mr. Churchill in a public letter with reference to Hitler -- that is an entirely different matter. Just a moment, please.

On the substantial objection of relevancy, the objection is sustained. The Tribunal is definitely of the opinion that this would be opening doors, many doors in fact, to collateral issues, and this is not, in our judgment, the proper way to establish the state of mind of the defendants in this case.

The objection is sustained. The document in order to preserve the sequence will bear Document No. 33, Exhibit No. 33, for identification, and the record will show that the objection of Counsel for the Prosecution was sustained so that we will not disturb the numerical order in which you are offering your documents, Dr. Dix.

DR. DIX: The next document, Document No. 34, is also an excerpt from the transcript of the Flick case. It contains the examination of the chairman of the Aufsichtsrat of the North German Lloyd, a man by the name of Linemann. This testimony concerns the contention of the Defense

that the consolidation of power by Hitler was essentially caused by the honors and decorations on the part of prominent foreign personalities who visited him and his Party affairs and especially the Party rally (Parteitag). I ask that the document be read.

The next document, No. 35, is an excerpt from the transcript of the IMT. It is the direct examination of the then defendant Schacht, again in lieu of the direct examination of Schacht here as a witness. The testimony treats the same subject matter which the last mentioned affidavit treats. It describes the many state visits by many foreign personalities from 1933 to 1939 in contrast to the complete vacuum of such decorations and visits during the Weimar Republic, and finally it establishes that Hitler climbed from one foreign success to the next with the approval of foreign countries. This document concludes Document Book 2. May I begin with Volume 3?

THE PRESIDENT: Yes.

DR. DIX: as for Document No. 36 I owe the Tribunal an explanation about its relevance since I expect an objection on the part of Mr. Sprecher. I shall not yet tell anything about its contents, but I shall ask the Tribunal for permission to give brief reasons why I consider this document as relevant. May I do that?

THE PRESIDENT: Yes, you may.

DR. DIX: General Taylor in his opening speech said -- I have already quoted this passage once before here -- "The charge is that the defendants together with other industrialists played an important part in bringing about the dictatorship of the Third Reich".

In the same sense he expressed himself in the Flick case only with the distinction that there he mentioned other Allies especially from the circles of the military leadership, and here he especially mentioned General Beck, General von Fritsch. In order to show how wrong the basic attitude of the Prosecution is, especially because it mentions the names of Beck and von Fritsch of all people as the accomplices of Hitler, when everyone in Germany knows that especially Beck was one of the most serious and most feared opponents of Hitler. In order to describe the incorrect basic attitude of the Prosecution, I took the liberty by means of this affidavit to submit a statement by a German General who collaborated closely with Beck and who gives a short description of the military and soldierly character of Beck. I need not read the statement, but this was the reason why I submitted it. I ask for a ruling as to whether I can offer it.

THE PRESIDENT: You may offer anything, Dr. Dix, without limitation, but that is no assurance that it may be admitted. May I ask you, Doctor, upon what theory do you believe that the attitude and state of mind and views of General Beck have anything to do with this case and with these defendants? I am not sure that I get your view on that.

DR. DIX: The attitude of General Beck, of course, has nothing to do with the attitude of these defendants. I already stated that I consider it relevant to prove that the Prosecution, in basic questions in describing the reasons which led to the assumption of power and consolidation of power by Hitler, holds an opinion completely and basically wrong, because it makes claims which anyone who is at all informed in Germany knows are wrong. This alone is the reason. I am completely clear that one can be of different opinions in this case, that is, about the admissibility of such evidence in this trial, and for this reason before submitting it, I briefly listed the reasons why I am submitting it.

THE PRESIDENT: Now for the record you are speaking of your Document No. 36 which is the first document in your Book 3, is that correct?

DR. DIX: Yes, it is the first document in Book 3.

THE PRESIDENT: And you are offering it, I understand, as your Document Exhibit 36?

DR. DIX: Yes.

THE PRESIDENT: Is there any objection from the Prosecution?

MR. SPEECHER: Mr. President, I am afraid I am in the position where I have to make a reluctant objection because I think the document contains good Prosecution material, but I don't see its relevancy in the point of view for which it is offered, and, therefore, I have to object on the very statement of Counsel.

THE PRESIDENT: Counsel, the Tribunal is of the opinion that the contents of this document are so remote as to afford no basis for the conclusion that it has any relevancy to the issues in this case. Your document will bear Exhibit No. 36 for identification and the objection of the Prosecution to its admission in evidence is sustained.

DR. DIX: The next documents concern the subject matter "State of Emergency of German Industry caused by a state-enforced economy and by fervor." The affidavit of Goering, which is Document 37 will not be submitted. I had put it into my document book when I did not yet know that the affidavits of deceased people cannot be admitted. I did not know about it at that time. Therefore, I say —

MR. SPEECHER: Mr. President, we had hoped that Dr. Dix would offer this document and at that time I had intended to make a statement because the Prosecution wants to call the attention of the Tribunal to a possible problem. We will not object to the admission in evidence on behalf of these defendants of the affidavits of deceased persons. We think that they are entitled to it. That is our position. We have argued that

position, and we certainly don't think that these defendants are entitled to less than what we thought we should have the right to offer as Prosecution material, but in that connection and if any of these defendants should want to submit affidavits of persons who are now under sentence of death, we take this means of giving notice to the Court and to the defendants that they should immediately notify the Court of that intention and that we should then make some special arrangements if necessary to cross-examine those persons who are under death sentence. Now we do feel that if the Defense doesn't take those steps at this time and then the affiant is executed, the question of admissibility would be on a different ground because the Defense then would not have taken reasonable steps to provide the Prosecution with the right of cross examination where that was readily possible.

THE PRESIDENT: Now as we understand the statement of the Prosecution it is this: that the Prosecution does not intend to object to the introduction of affidavits on behalf of the defendants on trial in those instances where the affiants are dead and, therefore, not subject to cross examination. We understand that that is a maintenance of what the Prosecution deems is a consistent policy with their position that they did offer them and while objections were sustained by the Tribunal, they will not object in the case of the defendants. That is first. The one limitation that the Prosecution has expressed upon that commitment is this: that in those cases where the defendants propose to offer the affidavits of living persons under sentence of death, the offer of the affidavits ought to be made in sufficient time to afford the Prosecution an opportunity for cross examination before the execution of the sentence, and that if that is not done, the Prosecution will reserve the right to object. Is that a fair statement of your situation, Mr. Prosecutor?

MR. SPEECHER: Yes, indeed, Mr. President.

THE PRESIDENT: Very well. I reiterated simply that there might not be any misunderstanding about it. Now you have the benefit of that statement, and you may exercise your discretion, Dr. Dix, as to whether now you wish to reconsider and offer your Document 37. If you wish to, you may offer it. I may say this: that within reasonable limitations the Tribunal's position would be that where testimony is offered and no objection made to it, or evidence or affidavits are offered and no objections are made, ordinarily the Tribunal would be inclined to let the evidence be admitted. With this further reservation the Tribunal does have a responsibility to see that the case does not get out of bounds and that its time is not taken up by too much material of no probative value, and in the exercise of a sound judicial discretion we reserve the right to control matters of that kind. However, that is not pertinent now, and Dr. Dix may determine in view of what has been said whether he does desire to offer Exhibit 37.

DR. DIX: I do not want to change my point of view and I shall refrain from offering this document. According to the customary procedure, it would get the exhibit number 37 just for identification. I will not submit it.

THE PRESIDENT: We will mark the Document 37 as Exhibit 37 for identification with a notation that it has not been offered in evidence.

You may proceed to the next.

MR. SPENCER: Mr. President, in this connection there is one further announcement and the similarity of the problem causes me to ask just a moment of your time. There are a number of persons who have been confined in Nurnberg jail for some period, either on loan from other countries or where arrangements have been made for some time that when the greatest need for them, either as witnesses or as persons to give information, was passed and over with, that then they should be returned or that they should be transferred for trial to other places.

That is true with respect to several people who may be able to give information in this trial and I think the defense has been advised in the case of Max Winkler, who is the head of the Main Trustee Office East that he is now being retained for a very short time solely because the defense indicated through Dr. Siewers that they wanted to have him produced before the Tribunal; and, under these circumstances, we have a parallel situation to what I suggested before because the prospective witness will soon be beyond the jurisdiction of this court and we request that, at least within the next week, he be produced if Dr. Siewers or any other defense counsel intends to produce him.

THE PRESIDENT: I assume that the Defense Center can furnish counsel for defense with the names of persons confined in the prison that come within the category referred to by the Prosecutor. If you do have any desire to obtain affidavits from those prisoners or to have them produced here as witnesses in behalf of your clients, you should act promptly so that the matter can be taken care of before the prisoners are beyond

the control and jurisdiction of the Tribunal. Otherwise, the evidence may be lost to you.

You may continue, Dr. Dix.

DR. DIX: The next document, No. 38, will be submitted by me only in part, not as far as it concerns the Kropp case but only insofar as it concerns -- that is, in its last paragraph -- the possibility that an industrialist might have refused his participation in the armaments production and the consequences of such a refusal. With this limitation I offer Document No. 38 as Exhibit No. 38.

It says there that it would not have been possible for an industrialist during the war to refuse his participation in the armament industry or, rather, to make it dependent on the fact that no foreign workers, prisoners of war or concentration camp inmates be assigned to them as laborers and that such a refusal would have brought about that the assignments given to them as far as armaments are concerned, could not have been carried out to the required extent, or in the time allotted.

The former Admiral Reeder says that he would then, because of this refusal, have been treated as a saboteur.

The next document, No. 39, is an excerpt from the bi-monthly journal, "The New Fatherland," of July 1947. The quotations are listed in the index. It is to show the extent of the terror which was reigning then, exemplified by the number of daily death sentences which, according to the statistical computations of the author of this article, amounted to 14 such sentences daily. I offer this document as Exhibit No. 39.

MR. SPEAKER: As Dr. Dix pointed out in the text of the document book, this document was already rejected in the Flick case and we would like to object to it, on the ground that it is not competent evidence; but, in order to possibly meet the principal purpose that Dr. Dix has in mind, the Prosecution will stipulate for the purposes of this case that the death sentences in Germany under Hitler did increase according to the number shown in this article. We don't think whether it is a little more or a little less is particularly important. Is that satisfactory?

THE PRESIDENT: Very well.

MR. BLY: I am in complete agreement with this stipulation and I will then offer this exhibit, just with the number 39 as identification.

The next document is an expert opinion by the attorneys, Reimerich and Otto of Heidelberg which describes the development of the Third Reich toward absolute dictatorship, not so much by describing the political conditions but rather by describing the laws which were the legal basis for this development.

I ask that the document be read and I offer it as Exhibit No. 40, and I may remark that it was also submitted and admitted in the Flick trial.

THE PRESIDENT: May I suggest that perhaps this inquiry as to the admissibility of this document might be narrowed down to the question as to whether or not it would be admissible as the expression of an expert. I just suggest the possibility that perhaps that would narrow our problem.

MR. SPRINGER: Well, Mr. President, I think it is possibly brief material. I say "possibly" brief material. It is a legal opinion of a German attorney in 1937 with respect to a particular -- 1937, yes with respect to a particular legal problem now existing in Germany. We don't think it is proof of the alleged facts that are stated in the opinion and the best proof with respect to those matters, or a better proof, I may say, is readily available to the defense. If it is relevant at all, we feel that possibly some limited excerpts might be put in the defense brief.

THE PRESIDENT: I am not expressing an opinion on the subject but it just occurred to me now that if you gentlemen were submitting briefs and the other side would cite this as constituting some showing or evidence of some legal principle, the Tribunal would probably consider it; but if not --

MR. SPRINGER: Yes, I think so, Mr. President. I think the showing that merely two lawyers write an article doesn't prove too much but it might illustrate some legal problem or points that might be helpful to you

but as referring to the fact,...

THE PRESIDENT: I very much doubt its competency as evidence. I am more inclined to think, if there is any merit in it and you come to briefing your case, Dr. Dix, you might with entire propriety call our attention to it and quote from it. I can well see that possibility but I do doubt very much whether or not it meets the requirements of competent evidence as an evidentiary matter.

That is your view on that, Dr. Dix?

DR. DIX: Your Honors, of course, I could state in the form of a brief what is said in here. That would essentially amount to the same thing. In this brief I would have as few opinions to express as the author does because this author limits himself essentially listing the regulations and laws which created the condition which the defense calls terror, unrestricted despotism, in an argumentative way.

Your Honors, it is my opinion one can do one thing and one can do the other. It amounts to the same. It isn't a matter of proving the expertness of the opinion, even though this is definitely a specialist's journal, not a newspaper, and this would show the expertness of the opinions of the authors. As an opinion about these people, I am sure the Tribunal does not want to listen to and I would say it would be simpler for the Tribunal and for me that you admit this expert opinion as evidence, but I would not object to it if I would have to state the same thing in the form of a brief.

THE PRESIDENT: The Tribunal is going to admit this document with this qualification. Insofar as it is a showing of what the German law was with respect to matters that may be pertinent to this inquiry, it will be considered by the Tribunal. Insofar as it contains showings of fact, it will be disregarded.

DR. DIX: That is what I wanted.

Now we are coming to a new subject: utterances of leading German scientists on the relation of Farben to science and research and, as I may add, general human problems or their attitude towards humanity. I have introduced —

JUDGE MORRIS: Pardon me, Dr. Dix. With some hesitation I venture to comment in here but we have been making slow progress this morning in the introduction of documents. That has been due, a large part, to a number of questions arising on admissibility. On the other hand, now you are entering a new phase, a new subject, and the Tribunal reads fairly fast, we go down the pages on your summaries in your index and I am wondering if it wouldn't be possible for you to follow the same system that we finally got the Prosecution to follow along toward the end of the case and which Dr. Bretcher followed and that is to group your exhibits in your statements so perhaps you could introduce several exhibits then under one brief statement as to the subject to which they pertain, and leave the matter of the contents of the exhibits to the Tribunal to determine when the Tribunal reads the exhibit.

I am sure that my fellow members of the Tribunal would appreciate that practice if you could use it and that it would be to the advantage of both saving time and presenting clearly affidavits and the other exhibits to the Tribunal in groups with respect to the particular subject that they apply to.

DR. DIX: Judge Morris, as far as those documents which are still contained in this volume, I shall gladly comply with your wishes. Within two minutes I should say we should be finished with this volume. As for the last volume which concerns the person of my client, Herr Schultz, who will probably not take the witness stand, I ask permission to point to those passages in my documents which seem especially important and illustrative to me. To replace the personality of my client whom I shall probably not be able to introduce to the witness stand, I will ask for this.

JUDGE MORRIS: I am not undertaking to lay down a rule for the Tribunal. I was just making a suggestion which I hoped you would be able to follow, at least to some extent.

DR. DIX: Documents No. 41 and 42 concern, as I already said, the utterances of leading German scientists, Nobel Prize winners, et cetera.

The documents which I shall not read, with the exception of one last sentence -- I have submitted them because the experienced Tribunal knows that, according to the nature of people, especially people in leading positions, at least now a days, do not gladly speak up for men who are in the dock in Nuremberg and that it is very important and significant even that these eminent men, authors of these documents, on their own initiative made these statements, put these statements at the disposal of the defense.

Therefore, I ask that h1 and h2 be admitted under the same exhibit numbers and if this is done I would only like to read the last sentence of this collective statement of scientists, I quote:

"From such experiences we feel the urge to remember in detail, besides the above general promotions in science also works of true humanitarianism by such persons.

Fortally, I would say as far as h2 is concerned and h3 that where I should merely given an identification number because these statements came to us uncertified and we now have to write to all the authors in order to have them certified. This is only true of h3, as I have just been informed.

THE PRESIDENT: Very well. Exhibits h1 and h2 are in evidence and Document h3 is given the exhibit number for identification only and is not yet offered in evidence.

MR. SPRACHER: Perhaps on that point the Prosecution can waive the normal certification, particularly since we don't think that those particular weight to the issues.

THE PRESIDENT: Very well.

MR. SPRACHER: And clear the record at this time.

THE PRESIDENT: Very well. Then the Prosecution, having waived the certification on Exhibit h3, h3 is likewise in evidence and that concludes your Book No. III, Doctor, if it will be any convenience to you we can take our recess about seven minutes early and let you arrange

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your work to resume after the recess.

Would that be better, Doctor? He shall rise.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

MR. DIX: Your Honors, the fourth document book deals with my client personally.

Document #44, which I offer as Exhibit #44, is an affidavit of the former President of the German Peace Delegation at Versailles, Dr. von Lersner. Dr. von Lersner says that he has known Dr. Schmitz since 1919, describes his quiet and retiring nature, says that he was devoted exclusively to his own field -- that is, the financial administration of Prussia, and, at the end, he describes an incident which well illuminates the character of my client. He tells that Bosch, toward the end of his life, was worried about the political developments and finally said: "I have not lived in vain for I have Schmitz, Hummel and you as friends."

The next document is #45, offered as Exhibit 45. It is an affidavit of Professor Dr. Wamboldt about the political attitude of Dr. Schmitz to the effect that he had very little interest in political questions and that, at any rate, he was definitely opposed to any radical development and that he always endeavored to strengthen and make closer Germany's contacts with other countries, and that this attitude occasioned Schmitz to collaborate in the International Nitrogen Convention of which he was chosen President every year, for ten years. The Court is no doubt aware that ten nations attended this convention.

Document #46, offered as Exhibit 46, is an affidavit of the Reich Commissioner for the Administration of Enemy Property in Germany during the war. Dr. Krohn states that his administration, after the collapse, was examined carefully by an Inter-Allied Commission and that no objections were made to their administration and he tells about the

attempts of the individual Party leaders, the Four Year Plan and the Reich Ministry of Economics to influence Krohn not to administer enemy property merely as a trustee, pointing out that other governments had appropriated German property. He, Krohn, had gone to representatives of industry, specifically Schmitz, who had emphasized very decidedly that they would have to continue to administer enemy property purely under trusteeship and that any compulsory transfer of this enemy property to German ownership had to be avoided. The reason was given that this would help later collaboration with the nations and would thus be more useful to Germany later than any temporary financial advantage.

The next document is #47 and is offered as Exhibit 47. This is an affidavit of the Social Referent of Fardon. It describes the social attitude of Mr. Schmitz and his collaboration in social and charity fields and his care for the employees of Fardon and his interest in individual provisions in this field and as touches upon the donations which are described in more detail in later documents.

In Document #48, the same gentleman has given us an affidavit, giving some interesting figures, but before I summarize its contents I should like to remark that the English document book is correct as far as the figures are concerned, while, in the German book, in the column entitled: "Remunerations of Vorstand members", the two zeros before the comma should be crossed out. On page 2 of this document, Your Honors, you will find an interesting table of the turn-over in billions of Reichs marks for social and dividend expenditures, and especially interesting are the salaries of the active members of the Vorstand. The last four are in percentages of the turn-over. You will see

that the salaries of the Vorstand were reduced by 2/3 from 1937 to 1943, while the turn-over increased. There follow conclusions from this tabulation which I request you to read.

The next document is 49. This was an illustration...

THE PRESIDENT: Pardon me, Dr. Dix. I think you omitted to say, for the record, that your Document 48 is your Exhibit 48.

DR. DIX: Mr. President, I cannot say. I believe I said that it was offered as Exhibit 48.

THE PRESIDENT: Any way, in any event, we have it straightened out now. Now, you are offering Document 49 as Exhibit 49, and we're current.

DR. DIX: 49, yes.

The affiant tells of a meeting with Schmitz shortly before the outbreak of war which shows Schmitz' firm faith in peace. The affiant wanted to go to America. He was worried about the news in the newspapers and cancelled his trip. He met Schmitz on his way to the North-German Lloyd office and told him what he intended to do. Schmitz said: "Why don't you go anyway? There will be no war."

The next document is 50, offered with the same exhibit number. This is an affidavit of Reichsbank Director Glessing on the subject which we dealt with in the cross-examination of Gritzowen, the insignificance of this so-called committee of experts on raw material questions and the fact that it was soon done away with by the introduction of the Four Year Plan. The affiant says at the end that, as far as he can recall, Schmitz did not play any prominent part in this so-called committee.

The next two documents, 51 and 52, which I offer with the same exhibit numbers, are affidavits of two gentlemen

whom you have already seen here in the witness stand. Mr. Krueger and Guenther Frank-Fahle. They discuss the subject which is familiar to you - that is, the subject of "window-dressing". With reference to Prosecution Document NI-9289, Exhibit 1069, I believe that I may sum up this matter by reference to the words "window-dressing". All these matters have been brought out in the examination of these two witnesses. Therefore, I shall merely ask you to read these documents and shall point out that the affiant, Dr. Krueger, here repeats his account of Schmitz' efforts to improve the financial situation of the gentlemen affected by the anti-semitic legislation and policy of the National Socialist Government.

The next document is #53, offered with the same exhibit number. This is an affidavit of Count von Spreti. The document refers to the question of donations, especially the particular donation which my client made on his own responsibility. I emphasize this fact so that my colleagues will not ask any unnecessary questions on this subject. The donation for the widows and orphans of the dead Waffen-SS men. Spreti is the son-in-law of Arthur von Weinberg. In this affidavit he reports that my client told him that the SS wanted money. He had helped his father-in-law to be able to avoid wearing the Jewish star by paying money to a SS functionary. Then he continues to describe Schmitz' attitude, who was always very intimate with von Weinberg, and at Weinberg's request Schmitz had continued to advise him on financial matters even during the Third Reich, and he tells how Schmitz helped Mr. von Weinberg when he was to be arrested and taken to a concentration camp. Respecting the preceding period, he tells about Schmitz' worries concerning Mr. Weinberg's fate

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because of an intensified antisemitism, soon to be expected. Anything else to be said on this subject is argumentative and I shall go into that at a later period. I merely wanted to point out the relevance of this document. The document also confirms, as far as I recall, Professor Krauch's statement that he, Krauch, after the arrest of Weinberg, was asked to go directly to Himmler to try to help Weinberg and finally, that it was only Weinberg's death which prevented the success of the intervention of Schmitz and Krauch and other members of Farben.

MR. MILL (Counsel for Schmitz): The next document is No. 54, offered as Exhibit No. 54. It describes how the report of the Vorstand of Farben to the Aufsichtsrat, prescribed by corporation law, came into being. I ask you to read this document. You will see that this was an overall report based on the individual reports of the individual "Spartan", sales combines, plant managers and so forth. The next document, No. 55, which I offer together with Nos. 56 and 57, supplying the same respective Exhibit Nos., deals with a subject which I need not go into in detail, because I believe that the prosecution has given it an exaggerated importance. That is the well known Auschwitz Album. That was in the interrogation of Lieutenant Colonel Tilley. These affidavits indicate how completely harmless this album was, so that if I went into detail on this I would be reproached with "tant de bruit pour une coquette." Then comes No. 58, offered under the same number, dealing with the question of the construction conference records and the problem of whether these records were sent to the defendant Schmitz. These are affidavits of certified Engineer Heidebroek who kept the minutes of the construction conferences of the Farben plant at Auschwitz. He also mentions the Auschwitz Album. His testimony is substantially the same as the secretaries Thummeel and Ester. And No. 59 offered under the same exhibit number, also deals with the construction conference minutes — the conclusion is that he can not say whether these minutes were sent to Mr. Schmitz. This whole question seems to me to be somewhat irrelevant. Document No. 60 is offered under the same exhibit number. This is an affidavit of the personal secretary of my client, Miss Ester, regarding the congratulations of ministers and so forth, received by my client on his sixtieth birthday. Here again I need not read anything. The Tribunal, with its experience, will not be astonished that a man in my client's position should receive congratulations on his sixtieth birthday from the leading personalities of the state. From No. 61, which is offered as Exhibit No. 61, the same person, Miss Ester, corrects a mistake made in NI 5136, Prosecution's Exhibit 316, where

she speaks of Mr. Schmidt's membership in the Military Economic Council, an organization which did not exist, and she thinks that she probably was referring to Mr. Schmidt's appointment as Volkswirtschaftsfuehrer (Military Economy Leader). The next ten documents, No. 62 through No. 71, I should like to offer in toto with the same respective exhibit numbers. They deal with the donations made by Schmidt. They show that those donations must almost always have had the same purpose -- that is care for widows and orphans. This is mentioned again in connection with the purpose of the donation to the widows and orphans of the fallen SS. I believe I have already mentioned that I will go into the whole subject of donations in detail later, divided by categories. I ask you to read these documents and correspondence connected with the donations and I have now completed the presentation of Document Book 4. Document Books 5 and 6 will be taken over by my colleague, Dr. Siegfried. They deal with the D.A.G.

Dr. SIEGFRIED: If it please the Tribunal, there are a number of documents between the Document Schmidt No. 62 and the end of the book Schmidt Document 71 which are not admissible under the rules. There are letters back and forth between various people not contemporaneous documents of the Nazi era but rather letters of the year 1947. In some cases the prosecution is not even able to tell the name of the person who wrote the letter to defense counsel upon request. In some cases there is no personal identification with respect to the person giving the information. In most cases we would consider this very serious and indeed press our objection. By not pressing an objection to these documents because we think they are by and large immaterial, we don't want to establish any precedent or in any way make either defense counsel or the Tribunal feel that those basic requirements should not be insisted upon and should not be enforced in case the issue involved is important or in case the prosecution at least thinks it's important enough so that it desires to have recourse to normal rules with respect to having statements made under oath with the person giving the information at least identified by name.

THE PRESIDENT: The prosecution's failure to object in the instant case will not be considered by the Tribunal as a commitment of policy to embrace it in the future.

MR. SPRECHER: Now, one further statement very briefly. I haven't objected, but I think that these documents by and large have not been responsive to the issues of the indictment and I thought possibly a short statement by --

THE PRESIDENT: That, counsel, is a matter of argument. We will be glad to hear you at the proper time. It has nothing to do with any matter now before the Tribunal. You will have full opportunity to point out the insignificance of the documents according to your views when we come to the argument -- or in your briefs, for that matter.

MR. SPRECHER: Well, I had thought that if we had made the prosecution's position clear at this time we might save considerable processing, because by my statement, Mr. President, I thought I would indicate some matters which are certainly not in issue here which apparently are considered to be an issue by some defendants.

THE PRESIDENT: Well, these documents have been processed and nothing would be saved now going into a discussion as to their weight. They are in evidence, unless you wish to object, and it seems to us that what the documents do or do not establish is purely a question of argument and briefing and unless you wish to object we think we had better get along and get the documents before us. We will not treat your failure to object as a commitment that will in any way bind you in the future.

MR. DIX: May I say just one sentence. I have explained the relevancy of these documents. I said that almost all these donations were to widows and orphans with reference to that particular donation to the widows and orphans of the dead SS men.

THE PRESIDENT: What we have said to counsel for the prosecution applies with equal force to counsel for the defense. Now, there is nothing before us. We are not hearing argument on that has been

established or what has not been established. Your documents are in evidence. Please let us have some more documents now.

DR. GIERLICH: Your Honors, the evidence included under the subject of DAG, depending on various aspects, affects several of the defendants independent of the thesis of the prosecution of the conspiracy of all defendants. The defense, in an effort to make its evidence as concentrated and as clear as possible, decided to include this material in two documents books, DAG 1 and 2; to present it as general evidence without, of course, denying any of my colleagues the right to add material of his own. The defendant, Dr. Schmitz, in his capacity as chairman of the Aufsichtsrat of DAG considered it a noble officium to have this material presented to the Court by his defense counsel. As Exhibit No. 1, I therefore offer DAG Document No. 1, an affidavit of Dr. Rudolf Schmidt of 1 December 1947, who, from 1915 to the middle of 1946, was a member of the DAG Vorstand. The witness, who because of his official position and activity, had complete insight into the connections between Farben and DAG, tells of the background history and the reasons for the community of interests contract between Farben and DAG.

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He testifies that this contract was brought about for purely commercial reasons and that the reason was the effort, after the first World War to create a new sound economic basis for all parties. The witness also corrected a number of inaccuracies in Appendix 9 of the prosecution on the subject of DAG. I beg your pardon, Mr. President. The Secretary General has just pointed out that the offering of these documents DAG exhibits will involve difficulties in view of the fact that there is no defendant DAG.

THE PRESIDENT: I am wondering, counsel, if it would not be better to offer these as Defense Exhibits 1, 2, 3, and so forth, as applicable to all defendants with the understanding, as you have already pointed out, that individual defendants may wish to supplement it in their own series of exhibits. I believe that would be better, instead of using the designation DAG to the Defense Exhibits. That would indicate then that it is applicable to all defendants as distinguished from individual defendants. May I inquire from the Secretary, if he will step to the microphone, if that will confuse your records in any way.

THE SECRETARY GENERAL: I think a precedent is being established here. There is no other case before any of the other Tribunals where a defense exhibit has concerned all defendants.

THE PRESIDENT: Well, as between designating these by some abbreviation such as DAG and designating them as Defense Exhibits generally, it seems to me the latter would be less confusing, and if it doesn't unduly complicate your bookkeeping some way I believe that is a better way to do it here.

THE SECRETARY GENERAL: As you desire.

THE PRESIDENT: Then the Tribunal will rule that a series of exhibits now being offered should be designated as Defense Exhibits and numbered beginning with 1 as far as the series goes.

DR. GIERLICHES: As Defense Exhibit Number 2, 2 of or DAG Document Number 2, an affidavit of the same witness, of 3 December 1947, on the question of the relation of Sparte III of Farben and the management

of DAG. The witness states that after the Sparten of Farben were created DAG was assigned to Sparte III. That did not mean, however, that it was subordinated to the head of Sparte III or that the head of Sparte III was responsible for it. The witness tells about a basic discussion in Heidelberg soon after the creation of the Sparten of Farben in which Geheimrat Bosch in the presence of Dr. Mueller, who until 1945 was Director General of DAG, and in the presence of the defendant, Dr. Gajewski, made it quite clear that Gajewski, as head of Sparte III was not the superior of Dr. Paul Mueller. As Defense Exhibit Number 3, I offer DAG Document Number 3, an affidavit of Heinrich Lora of 1 December 1947, about the practical terms of the relationship of DAG to I.G. Farben. The witness, who from 1931 until today has been Director of DAG, and who also speaks about the Heidelberg discussion just mentioned, states the Director General of DAG, Dr. Mueller, considered it of extreme importance to be independent and responsible in the management of DAG, which was a concern of its own. From the beginning of the community of interests contract Dr. Mueller always followed this policy and managed to achieve that DAG, especially in the field of explosives, was, in practice, completely independent, as shown already by the fact that in the DAG and specifically in the person of Dr. Mueller himself, there were outstanding technical experts in this field, with whom no one in Farben could compete. The Witness also points out that the international negotiations of DAG in the explosives field with the big chemical concerns of other countries, such as DuPont and the Imperial Chemical Industries, were always conducted independently and without the aid or the previous information or consultation of Farben. He then confirms that in his specific field the sale of explosives for commercial purposes, Farben never interfered, and the practical business policy was determined exclusively by DAG. As Defense Exhibit Number 4, I offer DAG Document Number 4, an affidavit of Heinrich Schindler, from 1931 until today Chief Engineer of DAG, dated 1 December 1947. The witness, who also confirms the Heidelberg conference, states

"In connection with my activity as Chief Engineer, I was always able to observe that DAG was virtually independent in the technical field. Technical collaboration with Farben was limited to mutual exchanges of experience and occasional mutual material and personnel support. In addition, the so-called credit applications of DAG, as far as they were investments of a civilian character, were submitted for approval to Farben in the TEA. This rule, however, was not always followed during the war. -- large part of the credit applications, even of a civilian nature, were approved by Dr. Moeller on his own responsibility. As Exhibit Number 5, I offer DAG Document Number 5, an affidavit of Dr. Rudolf Schmidt of 1 December 1947. The witness speaks of the affidavit of Paul Doncker of 7 June 1947, Document NI 7239, Prosecution's Exhibit Number 50, English Document Book 2, page 53, German Document Book 2, page 41. The witness deals with the reasons for the taxation proceedings and explains or supplements the statement of Doncker. In connection with the credit applications to TEA, he says no credit applications were submitted to the TEA that had anything to do with military matters. The TEA learned nothing of expenditures connected with military matters. The decision on these matters was in the hands of the DAG alone. As Defense Exhibit Number 6 I offer DAG Document Number 6, an affidavit of Franz Anton Gierlich, procurist of DAG, dated 19 December 1947, concerning the membership of the Aufsichtsrat of DAG from 1926 to 1945 and the number of Farben representatives in the Aufsichtsrat at any time. It is shown that the Aufsichtsrat, which in this time always had at least eighteen and at the most twenty-eight members at no time had more than three members appointed by Farben. As Defense Exhibit 7, I offer DAG Document 7, an affidavit of Dr. Rudolf Schmidt, of 1 December 1947. He speaks of the extent of the information Farben received about business of DAG. According to the witness there was no regular information given about every day business transactions. The community of interests contract, Paragraph 1, says that DAG is to obtain approval of Farben only for transactions going beyond the customary

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scope of their business. The witness states that as a result of the financial regulations of the community of interests contract, Farben was interested in the commercial result of DAG business and that consequently at regular intervals there were reports about commercial transactions, such as the turnover development, income and expenditures.

There was no reason for any further reports since the scope of the two firms was completely separate. The Aufsichtsrat was merely given the legally prescribed annual reports, and one Aufsichtsrat meeting was held annually. When the business of DAG was, to a large extent, influenced by military matters, about which the DAG had to observe secrecy, even to the Aufsichtsrat, this opportunity was an advantage to stop the quarterly reports.

The Aufsichtsrat was informed only at the annual meetings from that time on. Nothing could be said about military matters at these meetings. The annual audit-reports of the "Chemistry, Auditing, and Trustee company a.b.H." did not come to the attention of the Aufsichtsrat. The "Verwertchemie", -- as the Tribunal knows, this is the subsidiary of DAG -- which set up the Reich owned Montan company and operated then --, was not discussed at the Aufsichtsrat meetings at all.

While the witness does not commit himself as to whether the defendants Schmitz and Gajowski may have received the reports of the DAG through any other channels, he does state that both gentlemen did not receive the reports of the Verwertchemie.

As Defense Exhibit No. 8, I offer DAG Document No. 8, an affidavit of Heinrich Schindler of 18 December, 1947, giving the reasons why the plants constructed and operated by the DAG or Verwertchemie on behalf of the Reich are to be strictly separated from the business of Farben, because Farben had no responsibility for them and had no opportunity to influence them. In this connection, the witness states that "at the end of the war in the powder and explosives field there were a total of about 70 Reich-owned factories

in operation while D.G., at the end of the war, was operating only one factory completely devoted to the production of military powder, and four factories partly devoted to military powder and explosives production. In addition to that, in the subsidiary companies of which Dynamit A.G. owned a majority, there were four factories partly devoted to this field."

As Defense Exhibit No. 9, I offer DAG Document No. 9, an affidavit of Franz Anton Gierliche of 3 December, 1947, on the question of the knowledge of Farben about the conclusion of treaties, on construction and operation of Reich owned so-called Montan plants. The witness sums up as follows: "Just like planning, construction and operation of the Montan factories was the conclusion of the pertinent contract, that is to say, independently by DAG or Verwertchemie without Farben being informed. The provisions about secrecy (see, for example, paragraph 14 of the cover contract of 4 March, 1940) did not allow a submission of agreements of that kind, by Farben."

As Defense Exhibit No. 10 I offer DAG Document No. 10. This is an affidavit of Chief Engineer Heinrich Schindler of 1 December 1947, on a number of technical aspects in connection with the construction and the operation of powder and explosives plants in Germany. Since the Defense waives the right to call any witnesses for oral examination on this subject, I should like to be allowed to read a few very important passages from this very significant affidavit since, in the view of the Defense, they prove that in the powder and explosives field there was no definitely concluded rearmament at the beginning of the war and that, from the practical point of view, points of view were expressed which

were not be reconciled with an intention of waging an aggressive war. In accordance with the suggestion of the court, I shall read merely two passages which seem to me especially important.

First of all: "5.) The greater part of construction work in conjunction with the Montan installations constructed by D.M.G. was definitely completed during the war years. The expenditure till the beginning of the war i.e., from 1933 to the beginning of the war, was only 12 percent, while during the war 88 percent of the total cost was incurred. In this connection it must also be considered that these 12 percent included the expenditures for the Hoeslisch-Lichtenau plant, a replacement for the Reinsdorf factory of the W.M.G. which was destroyed in summer 1935 by an explosion. The Versailles Treaty included a clause permitting Reinsdorf to manufacture military high-explosives, and this factory was in operation already before 1933. Thus the percentage mentioned is reduced to approximately 10 percent."

And the second passage which I want to read is "No. 10) The orders which the Army Ordinance gave for the construction of factories or part-factories owned by the Reich Government were called advance notifications. The Dynamit A.G., before the 1st of September, 1939, received 112 advance notifications -- 29.3 percent of the total. From 1 September, 1939 until 31 December, 1939 -- that is, the period immediately following the declaration of war -- there were 83 such advance notifications -- equalling 21.9 percent. and from 1 January 1940 until the end of the war there were 188 or 49.1 percent. (In this connection the figure 188 is actually too low, as it only comprises those advance notifications which can be traced now, but not the total amount notifications)

"These figures also prove that, when war broke out, the technical rearmament in the powder- and high-explosives field had not been completed by any means. It should also be noted that 29.3 percent of the advance notifications, which date before the war, do not even reflect the actual armament level, but only give an indication to what extent the paper planning stage had been completed. Actually, the calculation under section 5 shows the real state of affairs, according to which approximately 10 percent of the expenditure prior to the war was used for factory new-constructions, while the corresponding figure for the war stands at 20 percent. How really unprepared even the theoretical planning was when the war started, is not only shown by the low percentage of the advance notifications received by that time (112--29.3 percent), but, is particularly emphasized by the fact that during the first four war months, from 1 September 1939 until 31 December 1939, 83 advance notes, that is, 21.6 percent, were issued."

"The number of advance notifications in this short period is not very much lower than the comparable one during the whole of the pre-war period, which covered several rearmament years, though. Therefore, there was reason enough at the outbreak of the war to reexamine the whole planning, which evidently did not seriously consider any hostilities, and hurriedly to fill the gap and issue new advance notes."

From the second part of the affidavit, which deals with the operation of the plants and which I should like to call the special attention of the Tribunal, I shall read only the first two sentences:

"The production figures of the company for the utilization of chemical production which had a lease to

operate the Reich-owned plants built by the DAG, were very low before the war. Only 3.4 percent can be put down for the pre-war period (3½ years), for the war years (5½ years) 96.6 percent of the total production. Practically, therefore, the pre-war production disappears completely, if compared to the war output."

The next exhibit is Defense Exhibit No. 11, DAG Document No. 11, an affidavit of Heinrich Schindler in which he discusses Document NI-9193, Prosecution Exhibit 698, an affidavit of Dr. Zeidlhack. The Zeidlhack affidavit is in the English Document Book 32, page 104; in the German Document Book 32, page 130. The witness testifies that the point of view of Dr. Zeidlhack contradicts itself and that his conclusions are not correct. With reference to the last paragraph, of No. 4 of the Zeidlhack affidavit, the witness points out that this paragraph must give the impression that Farben was responsible for the construction of an unnecessarily large number of factories. He then continues, and I quote from No. 3: "The I.G. never had anything to do with the powder and explosive factories which constituted by far the lion's share of the plants in the chemical field. On the contrary, the construction of these factories was carried out without the participation of the I.G. by DAG, WLSAG, Wolff & Co., etc., or by the subsidiary firms founded by the latter for this purpose up to that time. I would also be erroneous to make these firms in any way responsible for the extent of the new production amounts which rose in the course of the armament program. New production amounts were only obtained insofar as they were required by the Ordnance Office and actually ordered. It was certainly not possible for industry to pass any judgment on the production amounts which

were needed."

Mr. Cronse Exhibit 12--

THE PRESIDENT: Counsel, I think this would be a good place to suspend for the noon recess. if you don't mind; and just before we do recess, Judge Herbert has something to say about the schedule for this afternoon.

JUDGE HERBERT: Gentlemen, I understand that Dr. Siemers has to witnesses who will be available today, is that correct, Dr. Siemers?

DR. SIEMERS: Yes.

JUDGE HERBERT: Well, apparently under the schedule on which we are proceeding, the presentation of these documents, I suppose, will not require over about an additional half hour; is that correct, Dr. Gierlich?

DR. GIERLICH: Approximately.

JUDGE HERBERT: I mention that merely in order that you may have your witnesses in readiness about two o'clock this afternoon, Dr. Siemers.

THE PRESIDENT: The Tribunal will now rise until one-thirty.

A recess was taken until 1330 hours, 28 January 1948)

AFTERNOON SESSION

(The Tribunal reconvened at 1330 hours, 28 Jan. 1948.)

DR. GLENZ: (Counsel for defendant Schnitz): As defense Exhibit No. 12 I offer DAG Document No. 12, an affidavit of Heinrich Schindler of the 19th of December, 1947, about the development of powder and explosive production of the factories of the DAG and its subsidiaries where they hold the majority interest. The witness gives a list for the years 1930 through '44 about the total production of explosives and powder, subdivided according to civilian explosives, military explosives and powder. This shows that within the DAG the main importance was placed upon the civilian explosives, even in war, which exceeded in quantity the production of military explosives and powder. The fact is especially pointed out that during the war itself the percentage of civilian explosives from 1942 on increased again and that in the year 1944 61.7 percent of the production in the factories owned by DAG was accounted for in this field.

In another list the affidavit compares the civilian explosives production of the DAG, on the one hand, with the production of military explosives by a mixture of explosive components with the addition such as ammonia, etc., and of power production, on the other hand, where the over-riding significance of the civilian explosives production is even better illustrated.

As Exhibit No. 13 I offer the DAG documents Nos 13-I and 13-II, two affidavits of Heinrich Schindler of the 19th of December, 1947. The first affidavit lists the entire total production of military explosives in Germany from 1930 to 1944. It compares it with the production, 1) of the works of the DAG and its subsidiaries, where DAG had a majority interest; 2) of the other firms owned by the Reich, as well as of the other German production factories. The second affidavit gives the same comparison in view of the entire production of military powders in Germany from the year 1930 to 1944.

In the field of explosives the result of this comparison can be summarized as follows. The total production in 1930 to the end of the war of about 1.8 million tons can be broken down as follows: from the time of 1930 until the end of the war it amounted to 180,000 tons, which is 16.7 percent of the total production; and during the war it was 900,000 tons, that is 83.3 percent during the war. The entire production of the works of the Dynamit A.G. and its subsidiaries amounted, before the war, to about 22,000 tons, or 12.2 percent of the pre-war production, or 2 percent of the total production. During the war it amounted to about 80,000 tons, or 8.9 percent of the war production, or 7.4 percent of the total production. If one takes the pre-war and the war production of the DAG together, it amounted to about 102,000 tons, which is equal to 9.4 percent of the total production from 1930 until the end of the war.

In the powder field the following can be shown from the table. The total production before the war, amounted to about 190,000 tons, or 18.3 percent of the total production. The total production during the war about 850,000 tons or 81.7 percent of the total production. The production of the Dynamit A.G. and its subsidiaries before the war amounted to about 32,000 tons or 16.8 percent of the pre-war production or 3.1 percent of the total production.

During the war it amounted to about 80,000 tons or 9.4 percent of the war production, which is equal to 7.7 percent of the total production. Therefore, of the total powder from 1930 to the end of the war, about 102,000 tons or 10.8 percent can be attributed to the DAG. Of significance in this connection is the fact that in the powder field as well as in the explosives field the percentual participation of the DAG and its subsidiaries during the war did not increase but even decreased.

MR. SPEECHER: Mr. President; in connection with an objection which we must make, at least tentatively, to the competence of this witness

to give a¹ of this information, I would like to ask you to look at page 59 of the English copy of the document book, which is in Document 13. The affiant there states: "On the basis of material which in official ways has become known to me, I am in the position to express myself in regard to the development of the dynamite production.

And then of course in these affidavits there is an awful lot more than dynamite production; there are statements about what the entire Reich made in a number of fields and a fairly detailed submission of statistics. Now, we don't feel that the qualification of a witness to give material is entirely a matter where the responsibility lies with the Prosecution to bring matters out, on cross-examination or by a lot of other matters, unless some foundation is laid by Dr. Gierliche with respect to Schindler's ability to speak concerning all these matters. We at least would think that some question as to the competency --

Now, I haven't been able to study all of the documents because under the circumstances maybe a statement by Dr. Gierliche would be satisfactory to clarify the problem.

THE PRESIDENT: Well, Mr. Prosecutor, I think we would be justified in not only looking to this affidavit for the qualifications of the affiant but also to the other affidavits of his which are in evidence. And I think after a very slight examination of the record that some more details will appear in the affidavits as to his qualifications? In that regard, if there is somewhat of a prima facie showing of his possession of sufficient knowledge to testify as to these matters, then the objection would go to the weight to be attached to his testimony, rather than to its competency. I believe, by looking at some of the preceding affidavits, there is a further showing than appears in this immediate affidavit as to his associations with DAG and his competency to testify as to factual matters.

DR. GIERLICHES: Your Honor, in order to keep the explanation as brief as possible, the affiant has expressed his qualifications in his

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first affidavit in more detailed, and in later affidavits he did not repeat himself. Even though I believe that the first statements give sufficient insight into the qualifications of this witness, I may say for the record that the affiant Schneider was a member of the Main Committee for Powder and Explosives in the Armament Ministry and that in this capacity he was in charge of all of the figures, that is, he had access to the entire official material.

(Gierlichs continuing)

But I shall take the opportunity to have the witness make an additional affidavit about the origin of these figures which I shall submit later, even though I believe that already now the competency of this witness is well-founded, and better founded than that of the witness Struss, whom the Prosecution brought here as the witness for its figures and according to his own statements had nothing to do with these matters.

THE PRESIDENT: The matter would be met if there has been, - as it appears to us, there is, a prima facie showing, -- the matter will be met by your obligation to produce him for cross examination and the Prosecution would then have an opportunity to determine whether or not he is competent.

DR. GIERLICH: Of course he will be at your disposal.

As Defense Exhibit No. 14, I offer DAG No. 14, an affidavit of Dr. Walter Schnurr of the 2nd of January, 1948. Since 1936, Dr. Schnurr has been active as a chemist with the DAG, and until the outbreak of the war, he was in charge of research work on the explosive field. On the basis of the knowledge he gained there about the development of the process to produce hexogene and nitroguanidins the affiant gives a survey about the German production of hexogene and nitroguanidin in general, and the participation of industry in it especially, and until the outbreak of the war he was occupied with the stockpiling of this and the war production, with production capacities until the beginning of the war, and with the percentages of the hexogen production as between DAG owned firms and the firms owned by the Reich.

The result of the examination in the hexogen field, the witness summarizes as follows, and I quote:

(1) The German pre-war production of high explosive hexogene, recognized as indispensable for the conduct of the war, was so insignificant that it would have been sufficient only for a few days of war.

(2) The prewar capacity amounted to only 3.75 per cent of the maximum capacity attained during the war and less than 2 per cent of the capacity which was requested in the course of the war and for which the construction had actually been started.

(3) The industry confined itself to carrying out the experimental tasks which were requested and financed by the state. It abandoned the experiment plants as soon as it seemed appropriate. It always refused a large scale production of hexogene on its own resources in spite of the fact that this would have been simple and profitable.

(4) The total share of the DAG on the German hexogene production amounted to 13.1 per cent, the percentage in annual production was constantly decreasing and declined to 1.7 per cent in 1944. For 1945 the complete shutdown, even of the last DAG plant was contemplated."

In view of nitroguanidin, the affiant makes the following observation: "Similar and partly even more, as with the explosive hexogene, the conditions were concerning the explosives component nitroguanidin."

As Defense Exhibit No. 15, I offer Document DAG No. 15, an affidavit of Franz Anton Gierlichs of the 19th of December, 1947. In this affidavit the affiant comments on the Document NI 12740, Prosecution's Exhibit No. 1816, English and German Document Book 33, which is an affidavit of Dr. Otto Heilbrunn of the 28 of November 1947.

The affiant observes the following concerning plant B, commenting on the affidavit of Dr. Heilbrunn:

"In the figures given there, the turn over figures from DAG balance sheets from '36 to '42, there are military explosives contained therein too, which were produced in Reich owned plants within the DAG factories Duernberg and Kruemmel, and also in a Reich owned experimental plant."

He then gives a corrected survey which shows that the turnover figures mentioned in the affidavit of Dr. Heilbrunn amounting to about 900 million, only about 570 millions were produced in DAG factories, whereas the turnover to the amount of about 330 million, represents the turnover of the Reich-owned firm."

Affiant corrects and explains a few other statements of the affidavit and about the audits of the balance sheets of the Verwertchemie, and about the information Farben received on the audits - he states the following:

"From the time beginning with the first of January, 1937, as is shown from the books of the company, the accounting documents of that corporation, the auditing is no longer done by the Chemie Revisions u. Treuhandgesellschaft m.b.H., Berlin, which performed the auditing of the balance sheets of the DAG and most of their subsidiaries for the annual balance sheets after 1937. Instead it was done by the Deutsch Revisions- und Treuhand A.G. Berlin, which had been entrusted by the Reich Agencies with the auditing of the balance sheets of such corporations as were operating so-called Montan plants. This change of the auditing corporation practically coincides with the starting of the first Montan factory operated by the 'Verwertchemie.'"

"As far as I know", the witness continues, "the reports referring to the balance-sheets of the 'Verwertchemie' beginning from 1 January 1937, were not brought to the

knowledge of any I.G. Farben Agency."

As Defense Exhibit No. 16, I offer DAG Document No. 16, an affidavit of Dr. Peter Grillo, business manager of the Verwertchemie since 1938. The affiant discusses the Prosecution's Document NI 1006, Prosecution's Exhibit 713, English Document Book No. 37, page 130; German Document No. 37, page 139.

To be sure, he confirms the correctness of the figures contained therein, but he observes that the net profits of the Verwertchemie, were in reality no genuine profits to a considerable degree, since according to an agreement with the Montan, the DAG received an overall amount for its administrative work for the Verwertchemie, which was considerably below the actual administrative cost of the Verwertchemie, so that seen from an economical point of view, a considerable amount of the net profits was consumed by the administrative costs which had not been met.

This completes the documents of the first DAG Document Book, and I now come to the second DAG Document Book.

As Exhibit No. 17, I offer DAG Document No. 17, Exhibit No. 17, which is an affidavit of Edmund Ritter von Herz of the 19 December, 1947. The statement of the affiant who was the co-inventor of the tetrazene ignition compound and formerly director of the laboratory of DAG in Kooln-Dellbrueck, has reference to Documents NI-10,969, Prosecution's Exhibit No. 1011; to Document NI 10,970, Prosecution's Exhibit 1012; Document NI 10963, Prosecution's Exhibit 1013, and to Document NI-10,964, which is Prosecution's Exhibit 1014.

The Prosecution has submitted the four above-mentioned documents, which are contained in Document Book 43, with the heading, "Farben Participated in Weakening Germany's Potential

Enemies", in order to prove that Farbon, with the intention of weakening the war potential of its potential enemies, had obligated the American Remington Arms Company, Delaware, in its contractual agreement, not to furnish any military tetrazene ammunition into the British Empire; not to import any such ammunition into the British Empire.

The affiant, Edmund Ritter von Herz, who initiated the license negotiations with the participating foreign companies, at the request of the Board of Directors of the Rheinisch Westphalische Sprengstoff, A.G. or of the DAG, and who played an important part in them, describes how the agreement came to be made with Remington, namely, the agreement which excluded the importing of military tetrazene munitions to the British Empire.

This shows that this provision of the contract was made because of a demand by ICI, who wanted to have the British Empire market protected for itself.

The affiant summarizes his statement as follows, and I quote:

"The above statement shows that the exclusion of Remington from the markets of the British Empire, so far as military tetrazene munitions are concerned, can be traced back to a demand by ICI, a demand which DAG complied with." This stipulation did not affect DAG, since an interest of DAG on its own part did not exist, and since it had waived any import of military tetrazene ammunition into the British Empire, so that its own position in the export trade was not improved by Remington's exclusion."

The next Defense documents show the contracts which the RWS, or its legal successor, the DAG, made with Remington, the ICI and the Canadian Industries, Ltd, in this field.

The first two documents, which give the contracts with Remington, have, as was mentioned, before already been submitted by the Prosecution. Nevertheless, they are being submitted once again, together with the English and Canadian contracts in order to make it possible for the Tribunal to scrutinize the quotations contained in the affidavit of the defendant, Ritter von Herz.

Since the affidavit of Herz exhaustively treats the matter at hand, I shall not go into detail in explaining these contracts, and I offer to the Tribunal, the DAG document No. 18, as Defense Exhibit No. 18, and the DAG Document numbers 19, 20 and 21, as Defense Exhibits with the same numbers.

The next document, DAG Document No. 22, is again an affidavit of Franz Anton Gierliche, of the 3rd of December, 1947. I offer it as Defense Exhibit No. 23. The affidavit deals with exports of military powder and explosives in the years immediately before the war, 1937 to 1939; exports to countries which during the war, were enemies of Germany.

First of all the witness describes a deal which the Kohn-Rottweil A.G. concluded with the firm J.M. Steel & Company, Ltd. in London, in the year 1937, and on the basis of which altogether 1,736,590 kilograms of

Trinitrotoluene were imported to England between August, 1937, and February, 1938.

The witness then says, and I quote:

"Before concluding the business deal it was well known that the recipient of these Trinitrotoluene deliveries was the British War Ministry, so that as a result various negotiations took place with the then German Official agencies, GZW or GZH, in order to obtain the necessary permission for these deliveries".

Furthermore the affiant gives the list of the turnover of the Keoln-Rottweil A.G., as the mutual sales company of the DAG and the WASAG for the export of military powder and explosives to later enemy countries, in the years 1938 and 1939.

The affidavit is submitted in order to prove that in the field of powder and explosives, not only was there no conscious weakening of other powers attempted but until immediately before the outbreak of the war, the old business connections in this field were being continued; for the same purpose, namely to prove that the cooperation between DAG and its foreign business partners, was in no way intended to weaken Germany's potential enemies, but on the contrary, that this cooperation was maintained even when there was a considerable economic advantage for the partner in case of war, for this proof, the next document, DAG NO. 93, is submitted, which is offered to the Tribunal as Exhibit No. 23.

This is an affidavit by Edmund Ritter von Herz of the 19th of December, 1947; the affiant reports about a process developed by DAG in cooperation with the Heinkel Airplane Works, in the years 1935 to '38, to rivet certain parts which were only accessible from one side, especially in the construction of airplanes.

Here the rivet head was formed by the explosion of a small amount of dynamite contained in its shaft. Only in the beginning of 1939, the production started to a greater extent in Germany, and the Reich Air Ministry took over the process immediately, in order to repair

airplanes quickly. With the permission of the Reich Air Ministry, on the initiative of the firm Dupont de Nemours, Wilmington, Delaware, negotiations began in the spring of 1939, between this firm and the group Heinkel DAG, about the sale of the explosive patents which had been registered in the USA, in Canada and in Mexico, to the American Explosive private Company, a subsidiary of Dupont.

The witness then continues, and I quote:

"The negotiations, at the end of August, 1939, had not yet been concluded, but in consideration of the political tension the negotiations were then brought to a rapid conclusion. All of the technical data were provided by the Heinkel DAG group as quickly as was possible. Similarly, during the first half of September, 1939, after the war had already started, a certificate of transfer as well as an authorization were made out for the American Explosive Company, after many difficulties and formalities had been overcome, and sent to the USA via Italy by courier."

"Everything was therefore done by both the Heinkel Flugzeugwerke and the DAG in order to make possible, even after the war had broken out in Europe, the manufacture and utilization of these explosive rivets in the USA which proves, especially in wartime, as of the greatest importance to the German Airforce."

As Defence Exhibit No. 24 I offer DAG Document No. 24, an affidavit by Heinrich Schindler, of the 3rd of December, 1947, in which the latter discusses Document VI 6498, Prosecution's Exhibit NO 111; English Document Book No. 5, German Document Book No. 5.

This Prosecution exhibit is a letter of Dr. Paul Mueller, DAG to Dr. Kraenzlein of the I.G. Plant Hoechst. The affiant, Schindler, explains that the success of the nitration process for hexagone, described in the Prosecution's Documents, can be traced back to I.G., at the request of the Armaments office, and that the process which was invented was found to be uneconomical so that the small plant with a capacity of 100 tons per month was not used in the course of the war.

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As Defense Exhibit No. 24 I offer DAG Document No. 34, an affidavit by Heinrich Schindler, of the 3rd of December, 1947, in which the latter discusses Document II 6498, Prosecution's Exhibit NO 111; English Document Book No. 5, German Document Book No. 5.

This Prosecution exhibit is a letter of Dr. Paul Mueller, DAG to Dr. Kraenzlein of the I.G. Plant Hoechst. The affiant, Schindler, explains that the success of the nitration process for hexagone, described in the Prosecution's Documents, can be traced back to I.G., at the request of the Armaments office, and that the process which was invented was found to be uneconomical so that the small plant with a capacity of 100 tons per month was not used in the course of the war.

So far as the nitration process for trinitrobenzol is concerned, which was treated in this Prosecution Document, the affiant says that the process worked out by I.G. and which is quite complicated for the production of trinitrobenzol, could only be utilized in the plant with the capacity of 15 tons per month and that this installation was destroyed by an explosion before the war.

Since the production methods for Trinitrobenzol was extraordinarily uneconomical, and since the explosive Trinitrobenzol was of no special interest, this problem was already given up before the war.

As for the point: synthetic glycerine, also treated in the Prosecution document, the affiant observes that this problem was restricted exclusively to the civilian sector and had nothing to do with the rearmament.

As Defense Exhibit No. 25, I offer DAG Document No. 25, an affidavit of Franz Anton Gierliche of the 3rd of December 1947, which concerns the letter of Dr. Paul Mueller (DAG) to Director Ludwigs (I.G. Frandfurt) of 30 April 1940. This letter was submitted by the Prosecution under the number, NL-6346, Prosecution Exhibit No. 327, English Document Book No. XII, page 86, German Document No. 12, page 69.

The witness illuminates the connection in which Dr. Mueller wrote the letter submitted by the Prosecution and he points out that this very letter proves that DAG was practically considered merely a customer of Farben towards whom the conclusion of contracts with competitor firms was treated just as confidentially as towards completely strange firms.

As Exhibit No. 26 I offer DAG Document No. 26, an affidavit of Heinrich Schindler of the 3rd of December 1947 in which the affiant comments on the affidavit of Dr. Struss of the 30th of August 1947 as far as the expert commission, "Saeure," (acids) is concerned which is treated therein. The affidavit of Dr. Struss was submitted by the Prosecution under the number, NL-9487, Prosecution Exhibit No. 391, English Document Book No. XV, page 65, German Document Book No. XV, page 71.

The affiant, who contrary to Dr. Struss was himself a member of this commission, comments on the practical significance of the activity of this commission and finally points out that the splitting process worked on by this commission was in no way a pure matter of military production of explosives but had a peacetime significance and still has.

As the final DAG document, No. 27, which I offer as Exhibit No. 27, I submit an affidavit of Heinrich Schindler of the 19th of December

1947. In this affidavit the affiant corrects the three Prosecution Documents, NL-10033, Prosecution Exhibit No. 44, Document NL-10034, Prosecution Exhibit No. 45, and Document NL-10030, which is Prosecution Exhibit No. 48. All three Prosecution documents are in the English and the German document books No. II. I shall not discuss this affidavit in detail since it speaks for itself and needs no commentary.

This concludes my presentation, your Honors and before I leave the podium I merely observe that I am not identical with the affiant Gierlich whom I have mentioned repeatedly in my presentation.

THE PRESIDENT: Thank you. I don't see Dr. Siemers in the room. I wonder —

MR. SPEECHER: He just went to get the witness.

THE PRESIDENT: Oh, very well, very well.

Are you ready to call your witness, Doctor? Announce his name and the marshal will bring him in.

DR. SIEMERS: Dr. Kuopper.

THE PRESIDENT: May I ask you, Dr. Siemers: will we need any document books in connection with your interrogation of this witness?

DR. SIEMERS: Yes, I have already told the Secretary General to get Volume XX and Volumes LVII and LVIII.

THE PRESIDENT: Will you see, Mr. Secretary, that the page brings in our books? You may go along.

Will the witness remain standing for the purpose of being sworn and please raise his right hand, say "I," and state his name?

A I, Gustav Kuopper —

THE PRESIDENT: And now repeat after me the oath: Swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath).

You may be seated.

Mr. Witness, you have previously been on the stand and it will not be necessary for us to admonish you about our problems of translation here.

The witness is with the counsel for the defense.

DIRECT EXAMINATION

BY DR. SIECKE (Counsel for defendant von Schnitzler):

Q Dr. Kuopper, first of all, give us your birthday and birth place.

A I was born on the 26th of June 1894 in Dalsburg.

Q In order to take up a question now which would come later in cross examination, I would like to ask you whether you were ever a member of the Party and whether you held any office in the Party?

A I was a member of the Party. I joined in 1937, effective the 1st of May 1937. I did not hold any office in the Party.

Q I ask you to give me your professional career with special consideration of your position in Farben.

A In the year 1923 I joined one of the predecessor firms of Farben under ter Meer, as a legal expert. In the year 1930 I was transferred to Frankfurt and there I became a jurist in the so-called "Legal Department Dyestuffs" which was Legal Consultant for the entire Dyestuffs sales agency, that is the sales combine Dyestuffs. Around the end of 1938 I became Director of this Legal Department, Dyestuffs. Besides that, I was in charge of the insurance matters for Farben and for its own insurance company, the Pallas S.A.B.H. Konzernversicherung.

Q In what field did you work before the war particularly?

A In the field of legal consultation on matters of the Dyestuff sales.

Q Who was your immediate superior in Farben?

A Until about the end of 1938 it was Professor Solck and later Dr. von Schnitzler.

Q Until 1945?

A Yes, until 1945.

Q I would like to discuss with you the development of the dyestuffs business of Farben and to discuss Farben's attitude towards cartels with foreign firms and its attitude to international trade in the dyestuffs field.

First of all, give a brief survey about the dyestuff industry before the First World War.

A About this field one could write a whole book which, in the final analysis, would represent the history of the chemical industry altogether. The dyestuffs field — that is, the production of synthetic and organic dyes or, differently expressed, of coal tar dyes — is based essentially on intellectual achievements in Germany; namely, mostly of the various predecessors of the Farben industry.

A number of new and basic dyes were in the course of the decades before the First World War produced. Thus it came about that in the field of the dyestuffs production — that is, coal tar dyestuffs — the legal predecessors of Farben practically held the economic leadership in the whole world.

If I am not mistaken, the participation of these firms, or the share of these firms in the dyestuff business, before the First World War amounted to about 80% to 90% of the world production. Apart from the predecessor firm of Farben, the only major producer was Switzerland, the three great Swiss dyestuffs plants. Apart from that, there were dyestuff plants in France of which the main part were only branch factories of the legal predecessors of Farben.

As far as I recall, in France, before the First World War, there existed only one dyestuff factory which was independent of the predecessors of Farben. That was Saint Denis. That was an independent dyestuffs factory. Perhaps, there were some other small and insignificant ones besides. In England, too, to my knowledge, there was a dyestuffs production.

This concludes this field essentially.

Q. What was the dyestuffs business in the European countries during the World War? What changes took place during the First World War?

A. The fact that the legal predecessor firms of Farben had this predominant share in the world trade led to the fact that in the First World War there was an extraordinary scarcity of coal tar dyestuffs. As a result of this development, a number of countries which thus far had not yet started their own dyestuff production now started it or they intensified a production which already existed. The result was a considerable extension of the dyestuff production in the whole world. The branch factories in France of the legal predecessor firms of Farben were confiscated and were lost.

Q. What was the condition of the European dyestuffs industry after the First World War and here I am especially interested in the measures of the Versailles Treaty and the measures from the Armistice until the Versailles Treaty. That is the period from the end of 1918 to about 1926.

A. The first consequence of the Versailles Treaty was, as I have already mentioned, that the foreign participations of the predecessor firms of Farben in the dyestuffs industry were lost. Likewise, the extensive patents of Farben in this field were lost. The obvious consequence was a further strengthening of the dyestuff industry abroad which had already begun to develop in the First World War; but something further happened. The occupation of the Rhine provinces, especially of the works Leverkusen and Ludwigshafen, brought about that a number of chemists from among the Allies were active there and thus they were put in a position beyond the question of patents to observe the processes, the structure

of the installations, and to gain important technical knowledge in the dyestuffs industry from these works.

The further course of the development was that in view of the still existing scarcity of dyestuffs in the world, dyestuffs were subject to heavy reparation deliveries which had already begun with the confiscation of stocks from the factories mentioned above.

This very difficult situation caused the then community of interests of the tar dyestuffs industry to make a contract with a French company.

Q. Pardon me, Dr. Kuopper; one moment please. I wanted to ask something more about this subject. You were speaking of the confiscation of the factories and patents throughout the Versailles Treaty. Through whom was I.G. compensated?

A. I do not know. At any rate, I believe I can say that a compensation could only have been granted from the German side and it was quite minimal.

Q. You then spoke of the expropriation of production methods -- that is, during the occupation period -- that is, between the Armistice and the conclusion of the peace treaty. As far as these production methods are concerned, did foreign industry grant any compensation?

A. I never heard of any compensation having been paid for this.

Q. Dr. Kuopper, in the years from 1927 on, if I am informed correctly, cartel treaties were then concluded. I ask you to tell me how the idea originated to conclude cartel agreements with foreign dyestuffs industries.

A. Because of the development previously described by me of foreign dyestuffs industries, there was a considerably increased competition in the international dyestuffs market,

especially in the European dyestuffs market. The repatriation deliveries of dyestuffs mentioned by me before went into all kinds of channels, came up again at the strangest places, and led to the fact that a great additional disturbances resulted in the dyestuffs industry.

In addition, there were special conditions as regards France. The difficulties which were the result of the occupation of the Rhineland, especially in connection with the French, as I described them before, finally had the result that the community of interests of the tar dyestuffs industry still existing then concluded an agreement with a French company - I believe it was the Compagnie des matieres colorantes - which assured a considerable technical assistance on the part of I.G. to the French dyestuff factories belonging to that company.

On the French side the compensation was to consist of the payment of a set sum and of the participation in the net profits, I think. But I don't recall quite exactly that in connection with this agreement cartel-like regulations were already set down.

Q May I ask in what year this agreement was concluded and under what designation is that contract generally known?

A This agreement is known as the Gallus Contract. Exactly when it was concluded I do not know. I believe it was around 1921.

Q. What developed further as a result of this treaty? Did it continue to exist until the first cartel agreement?

A. The agreement was denounced unilaterally by the French side, I think, after the Compagnie des Industries Colorantes was transferred to the Etablissement Kuhlmann. The result was that the I. G., the community of interests, only received the fixed sum, but as far as the share in the profits are concerned, based on the furnishing of technical knowledge, etc., they did not receive this. The political situation at the time, which was the political crisis year 1923, as far as I remember, did not justify a struggle against this unilateral abrogation from the French side, which, in the opinion of Darben, was wholly unjustified.

Q. Do you recall, as a legal expert, whether the Gallus Contract had any provision on termination in it?

A. I do not know exactly but, at any rate there was no notice of termination given in accordance with a clause for termination notice as far as I remember. It was just said that the Etablissement Kuhlmann was not the legal successor of the original French party to the contract. Therefore, the contract was not binding for Kuhlmann.

Q. With which foreign dye stuffs industries were cartel agreements concluded after 1927, and in what years?

A. The difficulties in the dye stuffs field in the years before 1927 consisted particularly in the relationship to the French dye stuffs industry which was very disturbing in its effects. Furthermore, this forcible dissolution of the Gallus Contract mentioned above, had led to considerable worsening of the private economic relationships to the French dye stuff producers. The gradual development showed, as it does so often in economic life, that an understanding was better than a fight. The natural consequence was, as far as I remember, that the first cartel agreement was concluded with the French dye stuffs group and that was in the year of 1927. On the French side, the partners to the cartel agreement were essentially the same firms which later formed

the combination with Farben in the Francolor.

Another cartel agreement was concluded between Farben and the Swiss dye stuffs industry around the year 1929. These two again concluded an agreement with the French group, the so-called Tripartite Treaty.

The French group, on its part, had a special cartel agreement with the Swiss group.

The Tripartite group, that is to say, the German, Swiss and French groups, concluded a cartel agreement in the year 1930 with the Imperial Chemical Industries in England. This latter one was the so-called Quadrupartite Agreement.

So there were two, three and four partner cartel agreements and dual agreements lying in between these. Furthermore, a considerable number of the dye stuffs producers had concluded agreements in Europe. There were very few outsiders.

Q. May I ask you to give us the basic principle behind this cartel agreement and the purpose of them?

A. During the negotiations which led to the conclusion of the cartel agreement, one negotiated on the basis of a so-called reference period. That is, during a period of time the partners to the agreement had had. These turnovers then became decisive for the cartel quota. This means that the cartel agreements were no price cartels, and just as little, were they cartels which distributed certain fields or countries among themselves. Rather, the findings of the reference period led to a so-called property status which was then binding to all the partners. Thus it was prohibited to penetrate into the property status of a partner by underbidding cartel prices, for example. On the other hand, it was left up to each cartel partner whether he wanted to penetrate into new fields, especially where new consumer industries had been founded. This turnover quota just mentioned which had been established on the basis of the reference period was then the key for the settlement of accounts

within the cartel and on the basis of this key, a surplus of deliveries or failure to meet the quota was determined. Surplus deliveries and below quota deliveries were equalized by payment of money. The only exception was the relationship to the French. Within the German-French cartel agreement, the French had been given permission for a certain amount of production. I think it was seven thousand tons, which then played a part in the Francolor treaty. If the French group did not come up to this production figure, an equalization took place by delivery of merchandise. For example, Farben had to take in merchandise from the French partner into its own factories.

H. SLOCHER: Mr. President, perhaps if we could have a statement from Dr. Lionard as to the relevancy of this detailed discussion of historical matters concerning Farben's viewpoint in the development of the entire economic history of the European continent, no objection would be necessary, but it seems to me that for connecting this up to the Francolor matter we have had an exceedingly long amount of testimony.

THE PRESIDENT: Well, it is taking a long time to get to it. I'll frankly confess that I hardly know where to draw the line in view of the scope of evidence that the prosecution offered.

Go ahead as you have, Dr. Siemens. It's only about four or five minutes until time for our recess and I'll have an opportunity to talk to my associates about the problem. I am hardly in a position to comment on the observations of the prosecution at this time.

Go along.

BY DR. SIEMENS:

Q. Did this cartel agreement prove to be valuable and did the partners to the agreement -- that is, England, France, Germany and Switzerland -- were they satisfied on the whole?

A. I think I can say that these many cartel agreements worked out very well but, of course, in this very difficult field of mutual delimitation and equalization it was a mutual give and take. Skillfull

negotiations were necessary, and a lot of diplomacy, tact and skilfulness was necessary in order to keep the cartel partners together. It was the great merit of Dr. von Schnitzler that he managed to reconcile the often conflicting interests. It was he who saw to it that something was done wherever the interests of everybody were concerned. In addition, there was his great skill in conducting negotiations, especially in the cartel field. The only ones who always were in disagreement were the Frenchmen. The reason was that in a technical respect and in their sales organization they always were behind the other cartel partners.

Q. And the last question before the recess: What did Dr. von Schnitzler do in this respect and, in order to conclude the previous subject, how far did Dr. von Schnitzler participate in the creation of the cartels?

A. As far as this question is concerned, I would like to characterize Dr. von Schnitzler as the creator, promoter and maintainer of these cartel agreements. His figure, which was preeminent in the cartel negotiations, and his tactical skill were everything, and he was even able to keep the French in the cartel agreement.

Q. I think we'll postpone the other questions for after the recess.

THE PRESIDENT: The Tribunal will rise.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Now with reference to the objection that was made by the prosecution just before we recessed -- it is the view of the Tribunal that it is not in a position to say that the evidence produced from this witness is incompetent in its broad objectives, but we do have the feeling, Dr. Siemers, that you are perhaps going into more detail than the subject justifies, especially in view of the obligations that we all have of keeping the trial within some reasonable limitations of time. If you can get to the major features of your inquiry and eliminate some of the detail I think it will serve our purpose as well and also save us some very valuable time.

DR. SIEMERS: Your Honors, I thank you, and of course I shall endeavor to do so. But to avoid any misunderstanding I should like to point out one thing. If I understood correctly the prosecution accuses my client of plundering -- that is something that happened during the war -- and of preparation for aggressive war -- that is something that happened before the war. Now, if I comply with Mr. Sprecher's wish and do not go into Mr. Schnitzler's activities before the war and do not try to give you a picture of these activities, then I do not know what I can say about aggressive war. The cartel matter is an essential part of Dr. von Schnitzler's activity. The arrangement of cartels, the management of international negotiations before the war -- that was the reason. But of course, I shall endeavor to abbreviate it as much as possible.

THE PRESIDENT: Well, counsel, fortunate as it is when counsel for the prosecution and the defense agree, we can not anticipate that those things will happen too often. After all, the only orderly way we can meet this problem is for you to go along with your interrogations modified insofar as you feel that you can by the views that the Tribunal has stressed, and then if counsel for the prosecution thinks you are out of the field they can make their objection and we will undertake to try to find the answer to it. You may go along.

BY DR. SIEMERS:

Q Dr. Keupper, in order to get a picture of the position Dr. von Schnitzler held within I.G. Farben in the two decades before the outbreak of war, I should like to ask you briefly to describe his position within the Vorstand of Farben. This will certainly be permitted in view of the fact that Dr. von Schnitzler himself will not take the stand.

A I believe the question means that I am not to describe the formal functions of Dr. von Schnitzler in Farben, which are known.

Q That is right.

A What I am to do is to describe his actual sphere of work from the technical point of view. As long as I have known Dr. von Schnitzler and as long as I was in the firm, that is since 1923, Dr. von Schnitzler's main duty was to supervise the sale of coal tar dyes and intermediates and auxiliary products. This remained his domain until the end of the war -- 1943 or 1944. I believe. After the death of Mr. Heber-Andreas, he took over the sale of chemicals as well.

Q Let me interpolate a question. Do you know how it came that in spite of his many years of work in the field of dye-stuffs he was suddenly, at the end of the war, in such disturbed times, put in charge of an unfamiliar field?

A That was no doubt a question of personnel. After the death of Mr. Heber-Andreas -- Mr. Heber-Andreas had expressed certain wishes for the management, which the organization found it difficult to fulfill. The best solution seemed to be to assign this duty to Mr. von Schnitzler. He was in the same building as the chemical sales organization. In other fields Mr. von Schnitzler, of course, had only informational knowledge, knowledge gained from the many meetings at which he was present. Of course as he was in charge of the Commercial Committee he obtained general knowledge of the commercial and technical aspects in other fields. But he naturally did not gain any detailed knowledge.

Q Let me interpolate another question. Did Dr. von Schnitzler exercise any special activity in these other fields?

A As far as I know his activity was directly restricted to dye-stuffs. His other activities, such as in the Commercial Committee, were merely a sort of coordinating function of the various functions of Farben without his having to go into any details. I know that Dr. von Schnitzler, when he took over the chemicals field, had a great deal of work to do and had to spend a great deal of effort in order to become acquainted with this field which is essentially unknown to him.

Q What time does it take to become adapted to such a field within Farben to be able to work independently in such a field?

A In order to learn everything about such a field one requires years, in my opinion.

Q. Dr. Kuepper, you were speaking of dye-stuffs and sales organizations. This is essentially the field of contacts with other countries. May I ask you to speak about Dr. Von Schnitzler's position in connection with other countries.

A. In the tar-dye business exports are of decisive importance. Therefore foreign contacts were given special attention in the dye-stuffs business. Dr. Von Schnitzler, as the exponent of dye-stuffs sales, had to take over this function personally. It was he, at least during my time which was from 1930 on, who took a leading part in all international dye-stuffs negotiations. As I have already said it was he who created and upheld the cartels. He went to America at regular intervals in order to establish friendly contacts there with the American dye-stuffs producers and to maintain such friendly relations. There were not, however, any cartel arrangements with these manufacturers, even though in minor fields, as for the Asiatic business, there were certain cartel-like arrangements with the American dye-stuffs industry too which were in existence for many years. Thus it came that Dr. Von Schnitzler became very well known abroad and better known than any another person in Farben who may have had a similar or even a higher function.

Q. Did Dr. Von Schnitzler himself work on or direct the annual negotiations under the cartel agreements?

A. The chairman of the meetings of cartels varied depending on the place of these meetings. In Frankfurt it was Dr. Von Schnitzler who was in general charge of the negotiations. In the foreign meetings of the Cartels he represented the interests of Farben at these negotiations.

Q. How did Schnitzler conduct himself toward the foreigners at these meetings?

A. I know Dr. Von Schnitzler's negotiations, tactics, very well. He was extremely skillful, diplomatic, conciliatory, ready to give in where it seemed to him necessary, which corresponds to the overall picture of his character. I do not want to criticize him, but he was a very soft person. I know that so well because Dr. Von Schnitzler and I

often hold differing views. My entire nature is more antagonistic and deviates considerably from the character of Dr. Von Schnitzler. It was understandable that I never actually became very intimate with him. I remember that already before the war he reproached me not very politely for my manner in conducting international negotiations.

Q. Do you recall for what reasons, just as an instance, differences arose between you and Dr. Von Schnitzler on objective matters?

THE PRESIDENT: Counsel, that, I think, is a fair illustration of a detail that I have dispensed with here. Interesting as it might be it is not of very much probative value so far as the ultimate result of this trial is concerned.

BY DR. SIEBER:

Q. Dr. Koepfer, how did Dr. Von Schnitzler conduct himself towards the French? We had not finished this point. I mean before 1939, in negotiations with Frenchmen?

A. It was the same as in all negotiations conducted by Dr. Von Schnitzler. They were skillful, but willing to give in. In the case of the French this quality was decisive, otherwise the cartel would certainly have broken up before the war.

Q. To avoid any misunderstanding in the record, will you please tell us once more why was it necessary to give into the French to a certain extent in objective matters? I heard that your answer was not completely translated.

A. The French were the most difficult cartel partners. This was based on a weakness of their technical apparatus and their commercial organization which demanded them, in order to achieve their cartel volume, to adopt methods, which were not in accordance with cartels. This reportedly led to disputes in the cartels especially with the French, and Dr. Von Schnitzler devoted special efforts to conciliating these differences.

Q. Do you know that Dr. Von Schnitzler --

MR. STRECHER: Mr. President, there is nothing in the charges that Dr. Von Schnitzler did not behave himself in the nature of a gentleman with all the fine manners at his disposal and for the last half hour we have heard that he was a very -- made a lot of concessions in keeping the cartels together. He has never charged that he did not, and I think this whole topic has some relevancy in connection with a possible defense point that reaches to mitigation in connection with the so-called historical argument which the Germans use as a defense for the whole Franco-German matter. As far as the charge under Count I with respect to dye-stuffs is concerned, I would like to have Dr. Simons point out one point where in the indictment or the proof he thinks this whole course of examination has been responsive. In other words, the prosecution feels that we must occasionally rise to indicate how we don't see this is responsive either to the indictment or the --

THE PRESIDENT: That would have been enough to say, Mr. Prosecutor. I think your objection likewise has taken up too much valuable time of this court. You are at liberty to object whenever you do, but you should not argue the objection unless the Tribunal expresses a desire to hear it argued. If you simply state it. Again I think perhaps it is true that counsel for the defense is going into too much detail. It would be proper within reasonable limitations to show the background of the relationship between Farben and the French interests. But to go into too much detail of personalities, characteristics of persons dealing between the two groups, just really encumbers the record with a lot of data that will not be very persuasive. We will sustain the objection to the question and ask you counsel to try to get to the major premise that you are concerned about.

BY DR. GIERLICH:

Q. Can you tell me of any definite activities of Dr. von Schnitzler before the war, abroad?

A. He was in the German General Commissariat for the World Fair in Barcelona, which was a complete success and which made his name known and finally led to the fact that he held various offices in this field of exhibitions and fairs. He later became a member of the "Verberat" of German economy. He was also, on account of his well known name, in the International Chamber of Commerce, and again I assume, on the basis of his internationally-known name he participated in the German-English industrial conferences in the spring of 1929 in Duesseldorf.

Q. Where was the seat of the International Chamber of Commerce?

A. I believe in Paris.

Q. Did you yourself attend the German-British industrial negotiations in March, 1939?

A. No.

Q. After these negotiations, did you speak to Dr. von Schnitzler?

A. I heard him say at the time that these negotiations were completely successful and I recall that after the outbreak of war he expressed his regret about the beginning of the war, especially in view of the fact that the economic European agreement reached in March, 1939, in Duesseldorf had a promising beginning.

Q. Dr. Kuepoer, will you please very briefly tell us something about the methods of work of Dr. von Schnitzler to complete the picture of his personality?

A. In connection with his associates and subordinates he was extremely pleasant and kind. He never said a

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harsn word, and any difficulties were solved in his very polite way.

Q. Did he let his associates and subordinates have an independent or a dependent position?

A. In view of the extent of the field of which he was in charge, it was a matter of course that there was a certain degree of independence for his department chiefs, so to speak, and this was actually the case. But he coordinated and adapted all business.

Q. Did you know Hitler's aggressive plans regarding Austria, Czechoslovakia, Poland, Russia and the United States?

A. I knew nothing of actual aggressive plans. I must assume that if they had been known to the management of Farben, I would have learned something about them. I had to learn about them because I was in charge of a field in which I would have to take special precautions in the event of an aggressive war.

Q. What was this field?

A. The field of insurance. It lies in the nature of a war of aggression that it will certainly come; but if war had definitely been expected, I would not have given a considerable part of Farben's insurance -- especially fire and explosives insurance by way of reinsurance, -- to England. And in September, 1939, I would not have been extremely embarrassed as to how I was to cover this insurance elsewhere, since August, 1939, when it was clear that war was coming, I was much concerned, but I did not go to Farben but to a very important insurance agent in Hamburg. I knew that he had very good connections with various agencies and was very well-informed; a man who was known as a violent opponent of Nazism, who had been

in a concentration camp and became its victim. This man said to me at the end of August, 1939: "I give you the moral guarantee the conflict will be settled, there will be no war." But the war came, and I myself was in very great difficulties in my fields of insurance.

Q. Will you please give us the name of this man that you just mentioned?

A. Otto Huebner.

Q. You were just speaking of insurance abroad. Did Dr. von Schnitzler at any time before any one of these conflicts express to you any wish that the insurance should be transferred to other countries?

A. I did not receive any such instructions either from Dr. von Schnitzler nor from any other German man.

Q. In connection with war of aggression, the Prosecution has submitted two documents giving Goering's speech of the 17th of December, 1936, in the Prussian House. This speech is reproduced in a document in Book 20, which I shall now hand to you; page 58; page 9 in the English. That is Exhibit 421. There is a title page to this document: "Five, confidential industry, March 1939." There is no signature. It is headed: Prince Minister General-Oberst Goering concerning the execution of the Four Year Plan.

May I ask you: Do you know Goering's speech in this form? Do you know this document?

A. I do not know this document.

Q. To save time I asked you to look at this document beforehand. Do you recall that Goering made such a speech at that time?

A. I recall that only because this speech contains the notorious concluding words: "We are in the middle of

mobilization and in war -- but there is just no shooting yet." That is the only sentence that I remember from this speech.

Q. Now, the Prosecution has submitted that record of the meeting of the Dyestuffs Committee of 22 December, 1936 -- that is the same book, 20, page 15 in the English text, page 70 of the German. This meeting was presided over by Dr. von Schnitzler. On the first page is a list of those present, and you are one of them. This document contains only excerpts. It is a very long record. The Prosecution has quoted the opening sentence: "Dr. von Schnitzler reports strictly confidentially about the lectures of the Fuehrer and Reich Chancellor as well as General-oberst Goering's on the 17th of this month, in Berlin, regarding the duties of German economy in the execution of the Four Year Plan.

Do you recall that Schnitzler reported to the Dyestuffs Committee on this speech, and will you please explain what the words "strictly confidentially" in the minutes mean?

A. That this speech was held in the Dyestuffs Committee I did not remember --

Q. Pardon me for interrupting you. A speech was not made in the Dyestuffs Committee?

A. That a report had been made on this speech in the Dyestuffs Committee, I did not remember until I saw these minutes of the Dyestuffs Committee. If it is noted here that Dr. von Schnitzler's report was strictly confidential, in my opinion that means nothing special. If a report is made on speeches which have not been made public yet, speeches of leading government personalities, then the word "confidential" or "strictly confidential"

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was put in the record. Also these expressions "confidential" and even "State secret", etc., were greatly misused. In the last few years of my activity I hardly saw a single document which did not have a red stamp on it: "This is a State secret," even if it was the most harmless matter possible.

Q. You have just spoken of speeches which were not made public. Do you recall whether this speech was published?

A. I know that that speech was published, because I remember that question; that there was no shooting yet, and I remember that it was generally discussed by the public at the time.

Q. This quotation which had such a pregnant effect did von Schnitzler report about it at this particular meeting in question?

A. That is possible, but I do not remember it.

Q. Do you believe Mr. Kuepper, that you would remember it since it is a fairly pregnant quotation, if it had been recorded?

A. I cannot say that because my remembrance of this speech can just as well come from the newspaper or general about this speech talk at the time.

Q. With respect to this sentence which has been quoted, was Goering's speech considered a war speech, a preparation for aggressive warfare?

A. No, at least not by me. Otherwise I would have been able to take entirely different steps in my special work at that time. This was a time when I was fighting a bitter struggle with the English, to induce them to continue taking charge of Farben's insurance, and even after this speech, I renewed this reinsurance. If there had been any talk of a war of aggression at that time I certainly would not have done so. If I were informed about intentions of an aggressive warfare and I had still invested in insurance in England, I would rightly have been dismissed.

Q. I must come back to the cartel agreements during the Second World War?

A. During the Second World War all of the cartel agreements were dissolved. In the German-Swiss Cartel arrangement, the Swiss firms wrote to Farben - I believe it was about the beginning of 1940, and they said that they could not continue the Cartel arrangement because of their German Swiss Ordo Republique, and in the course of negotiations with the French groups -

Q. Just a moment, Dr. Kuepper. Did Switzerland ever abrogate the Cartel agreement with Germany, or the Tripartite or Quadripartite cartel?

A. So far as I know, they abrogated only the agreement with Germany.

Q. Was there any abrogation within the Tripartite or Quadripartite cartel?

A. As we began the negotiations with the Francolor, ICI in a letter to the French group, stated that the Quadripartite cartel, that is the one in which English dyestuffs, including British dyestuffs manufacturers, had been dissolved. It had been dissolved on the basis of the English regulations and the legal decisions made on the trading with the enemy Act.

Q. What was the wish of Farben on the Cartel question under the New Order and in connection with the Francolor agreement?

A. It was doubtless the wish of Farben that these Cartels should be continued as far as possible. I know, for example, that Dr. von Schmitzler frequently visited the important men of the Swiss dyestuffs factories in order, as he said, not to lose contact. The only thing that was not clear in the whole situation, was how the cartels would be continued after the war, that is to say, on what basis, since in the meantime almost everything had changed on which the cartel had been based.

Q. Now I should like to know what idea was arrived at that was to form the economic basis for the time before the end of the war until one could again reach final agreements with England, Switzerland and the other countries?

A. The only possibility at that time was to again talk with the French, to take up contacts with them again.

Q. Now I should like to discuss a few details about Francolor with you. The question of how the contracts came into being, what the negotiations were like, what economic ideas were decided. Please tell us whether you had anything to do with the negotiations and the contractual arrangements, and what your position was?

A. As to the first negotiations about the later foundation of Francolor I was not present. I came into the matter only when it was necessary to find the proper juridical formulation which was my duty. The

first negotiations took place in Paris, I believe, in January, 1941. I was present at these for the first time, and then with a few exceptions I attended all further negotiations until the whole contract was concluded.

Q. France was conquered in the summer of 1940. At whose initiative were negotiations taken up in the dye stuffs field between Farben and the French?

A. I was always informed that the first initiative to begin economic talks between the French group and Farben originated with Mr. Frossard, who approached Dr. Kramer, the head of our Sales Organization in Paris, the so-called SOPI.

Q. What does SOPI mean?

A. Société pour l'Importation de Produits Chimiques et Matières Colorantes, something like that.

Q. What was Frossard's suggestion?

A. Frossard suggested to I contact again Dr. von Schnitzler when he knew very well, because he was greatly worried about the fate of his plants in France. On the 21st and 22nd of November 1940, the first conference took place in Wiesbaden under Minister Hermann.

Q. You have already said that you were not present. Can you tell us what the impression of Dr. von Schnitzler and Dr. Kluger was about these negotiations under Hermann?

A. The strongest impression that I have from the reports of Mr. von Schnitzler and Mr. Kluger, that is to say, what I remember from their reports, - is that Mr. Hermann who was in charge of the negotiations, since he was on the Armistice Commission, had been very excited and had pounded on the table so much that both Mr. von Schnitzler and Dr. Kluger told me that the conduct of Mr. Hermann was very improper. It was also mentioned that Minister Hermann was known as a wild man.

Q. Dr. Knopfer, I do not want to tell you how to act, but perhaps I may suggest that you could speak just a bit faster, to make the testimony more fluent. If the translation cannot keep up, the interpreters will let you know. But I think it will be possible.

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How did later negotiations proceed, just in general? Was Henson present
was an emissary of his present, and did this fact influence the negotiations
in any way?

The subsequent negotiations were almost exclusively of a private industrial nature. These negotiations proceeded in a very friendly atmosphere, but at these negotiations, too, Dr. von Schnitzler demonstrated his well known conciliatory attitude. The form was definitely praiseworthy, even if there were points there in the interests of I.G., where they had to be insisted on.

Q. Where did the further negotiations take place?

A. The further negotiations took place in Paris.

Q. At whose request?

A. I believe it was the French who expressed this wish. In the entire "Francolor" matter I don't believe that I was present at a single meeting which was not in Paris.

Q. Now, the demand of the Farben for leadership was mentioned. How was this demand put forward and how was it justified?

A. This demand was justified by the fact which I believe I just mentioned and which I will not, therefore, have to repeat. To summarize these briefly, these facts were; the French dyestuffs industry was almost exclusively based on earlier property of Farben.

Q. These German factories came into French hands through the Versailles Treaty. I.G. based it on the historical developments which we will not discuss any more, especially since Mr. Sprecher doesn't like it.

Q. Were there any other economic considerations which were brought into play or was there only the old claim, or the claim for reparations from the Versailles Treaty, brought forth?

A. Also the cartel arrangement with the French had also been extremely difficult, and in the long run, a cartel connection with the French without real leadership did not seem possible. Thus, in order to continue the old cartel new forms had to be found which were presented in the entire Francolor transaction.

Q. Did the amount of dyestuffs business Farben and the dyestuffs

business of the French dyestuffs factory play any role or was this not discussed?

A. That was not the decisive point but rather connections in the market.

Q. How did it happen that Farben demanded 51% of Francolor and was not satisfied with 50%?

A. Before the beginning of the Francolor negotiations, this matter was discussed at great length within Farben. Who was for 50% and who was for 51%. I cannot say. As a lawyer I recall, as the most important consideration up at that time, the consideration that the entire emphasis in drawing up the contracts and the legal structure of the Francolor organization, was on the French side. The president was and had to be a Frenchman. He could be appointed only by agreement of both parties. He could be dismissed only with the aid of two stockholder meetings. Appointment of a new man could not have taken place without the approval of the French group.

The Verwaltungsrat's Administration Council was also composed of both parties. It too was not elected by the stockholders, but by the two groups, half and half, and moreover the president of Francolor was included among the French members of the Verwaltungsrat. Moreover, finally, all personnel of Francolor were and remained French.

Farben did not put any chemists, any technical experts, any commercial men, into Francolor. Also the commissions that were set up, a commercial commission and a technical commission, were also composed of both groups.

Q. You spoke of the special position of the president of the society. Was this position established by French corporation law or what does your remark mean?

A. Toward the beginning of the negotiations it was pointed out to us that a law had been passed by the Vichy Government. I believe, it was actually two laws which changed the previous corporation law of 1937 in a decisive point. That was the position of the president. This law

provided that the general director or chairman of the Verwaltungsrat was to manage the concern.

It is true that in the charter the position of the French president was changed from the provisions of the Vichy law of November 1940. Moreover, it was pointed out, that these changes as expressed in the charts of Francolor, did away with the important position of the president. I believe that this is not correct, either factually or legally; factually, because this formulation of the charter with its deviation from the French corporation law, was not based on any demand made by Farben. The charter of Francolor was worked up almost exclusively by the French.

As I recall, the French had a total of, I believe, five lawyers working on this. From a purely legal point of view, I had only one conference on this matter of formulation of the charter which, it is true, was a very long conference at which the five lawyers I have just mentioned were present for the French, and on the other side I myself and our French legal advisor, Maître Lencle.

These drafts which were presented at that time, included all these provisions, even the one changing the position of the French president. I personally recall, at any rate, no debate in all the conferences with the French group, at which Farben demanded a change in the position of the French president.

Q. Dr. Zuczyer, according to the chart, was the position of the French president, or, rather, the position of the president of the French company -- that is, Francolor -- an outstanding position?

A. This is the legal point of view which I have just mentioned.

Q. If the Court does not consider it important, I believe we need not go into the details of the legal considerations. I believe your statement is sufficient that, even according to the charter which the French had drafted, the position was very important, even within the company.

A. Even if not as important as according to the Vichy law of November 1940.

Q. Now, could one get the idea that whoever owns 51% -- and this is no doubt customary -- can do anything towards the majority? You have just said that it was more difficult here because the president could only be removed by two stockholders' meetings.

Now, please tell us what happened if two stockholders meetings had been held and Farben had succeeded -- this did not actually happen -- could Farben, holding 51% of the stock, simply appoint a new president?

A. No; the new president could still be appointed only with the agreement between the French group and Farben.

DR. SIEMERS: I believe, Mr. President --

THE PRESIDENT: The Tribunal at this time will rise until nine-thirty tomorrow morning.

(The Tribunal adjourned until 0930 hours 29 January 1948.)

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OFFICIAL RECORD

UNITED STATES MILITARY TRIBUNALS NÜRNBERG

**CASE No. 6 TRIBUNAL VI
U.S. vs CARL KRAUCH et al
VOLUME 18**

TRANSCRIPTS
(English)

29 January — 4 February 1948 pp. 6005-6426

Official Transcript of Military Tribunal VI
in the matter of the United States of America
against Carl Krauch, et al., sitting at Nurn-
berg, Germany, on 29th January, 1948, 0930-
1630, Justice Curtis G. Shoke, presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI. God
save the United States of America and this Honorable Tribunal. There
will be order in the court.

THE PRESIDENT: You may make your report, Mr. Marshal.

THE MARSHAL: May it please Your Honor, defendants Krauch, Haeffliger
and Schneider are absent from the courtroom.

THE PRESIDENT: The defendant so named have been excused from atten-
dance today on their own application. Are there any necessary announce-
ments from the Prosecution before we start the trial?

MR. SPEECHER: No, Your Honor, I beg your pardon.

THE PRESIDENT: Anything from the defense?

DR. BOETTCHER: No, Mr. President.

THE PRESIDENT: Then, Dr. Siemers, you may continue with your inter-
rogation of the witness.

DR. SIEMERS: Mr. President, Dr. Boettcher didn't know that I have
a matter to discuss, a matter of procedure, before I continue with the
witness.

THE PRESIDENT: Very well.

DR. SIEMERS: Yesterday, Mr. Sprecher stated that there is a category
of witnesses who have come to Nurnberg, and are here in the prison because
they are defense witnesses. It is proposed that these witnesses either
be sent to other camps, or to other countries, or released, and I feel we
should ask for a ruling on these witnesses. Mr. Sprecher mentioned the
witness Dr. Winkler, approved as a witness for us. There are two things
I have to say about this. I would be grateful to the Prosecution, and,
I think this would expedite matters, if I and the other defense counsel
could be informed which witnesses are affected. We ourselves can not al-

ways tell, since in general we don't know the practical details of how a witness is brought to Nurnberg.

Secondly, I have something to say about the witness Winkler, and I would be glad to settle this matter. I happen to have asked for Winkler yesterday evening to speak to him and Mr. Sprecher, after we had reached a basic agreement, was kind enough to agree to my speaking to Winkler alone. Unfortunately, I can not make any statement today, and probably not tomorrow as to whether I should like to examine the witness Winkler, or whether I will be satisfied with an affidavit, or whether I will be able to waive examination of this witness. Last night, and that is the reason I bring this matter up, Dr. Winkler was on the list; but had been crossed off again as the officer told me. He said, "I could only say this was by order of ~~the~~ ^{the} ~~207~~." He didn't know who had given the order. I have no way to find this out, and I should appreciate it if Mr. Sprecher would be kind enough to clarify that, or if necessary, the Tribunal could help me. Whether that has anything to do with formalities, I don't know, but I have to talk to Dr. Winkler before I can say anything.

THE PRESIDENT: Well, gentlemen, that is not a matter which need consume much time of the Court. As the Tribunal understands the situation, the administrative officials feel a responsibility to make proper disposition of a witness, when he has served his purpose here. In other words, it is hardly fair to the administrative agency to leave the matter in abeyance, and to be uncertain as to the desire of counsel. I shall take it on myself to ask the prison authorities to prepare a list of those who are held in prison as witnesses, and the situation as it pertains to them. I shall give it to the Marshal, and I shall ask you men to kindly indicate your desires as to whether or not you wish these witnesses held and for what period of time, so we may know, and then the prison authorities can be advised when a witness is no longer needed here, and proper disposition can be made in the matter. I shall get the information as soon as

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Court No. VI, Case VI

possible, and I'll put it in the hands of our Marshal so he can check who is ever there, and to indicate when you are through with them, and then the prison authorities can be advised, and the witness disposed of in accordance with controlling regulations.

MR. SPRECHER: Mr. President, I want to make one thing clear, because I think it is proper for both you and the defense counsel to know my limited authority in this matter. When I told Dr. Siemers and any other defense counsel that I have no objection to waive a so-called right under a rule with respect to confined witnesses, that there may not be some other reason why, for instance, a man like Winkler, who is head of the HTO in Poland may not be approached, that it is my business, I can say, it is our policy, in the Farben Team, not to insist personally on being present at any of these interrogations, regardless of why the people are in jail.

THE PRESIDENT: Very well, we will endeavor to get the facts as they pertain to these witnesses and make them available to you and protect your rights and at the same time we will ask you to cooperate with the administrative authorities so the witnesses can be released or disposed of when you are through with them, that is all we are concerned with. You may go along now, Dr. Siemers.

DR. SIEMERS: Thank you, Mr. President.

GUSTAV KUEPPER, a witness, recalled to testify as follows:

DIRECT EXAMINATION

BY DR. SIEMERS:

Q.- Dr. Kuepper, yesterday we were speaking about the question of how it came about that Farben received fifty-one percent under the Franco-German Agreement, and the French forty-nine percent. You said that this was connected with the pre-eminent position of the President of the French corporation. In this connection you mentioned that there had to be an equilibrium in the whole corporation. I have been informed that was not

quite correctly translated. Since this point is important to me, I should appreciate it if you would say one or two sentences about the idea behind it?

A.- Through a participation of fifty-one percent a balance was achieved between the legal and objective position of Francolor and that of Farben, an equilibrium was established. The fifty-one percent of Farben on the one hand was compensated for by the fact that the President was French, and he could be appointed only by joint agreement, and could be removed only through different formalities. Also the fact that the seats in the Verwaltungsrat were equally distributed, and that was so in the committees too and, finally it was provided in the contract that the personnel of Francolor always had to be purely French.

Q.- Thank you. That was the legal aspect. I have one more question about the practical aspect. Was this whole question of great importance not from the legal but from the practical point of view?

A.- It was not of any great practical importance, because in the first part of the negotiations, an agreement had been reached that Mr. Frossard was supposed to be president of the company. A person agreeable to both sides, so that no actual problems or source of disputes arose from the position of the French president, so long as Mr. Frossard was acting in that capacity.

Q.- You say these difficulties could not result during the negotiations within Francolor. Were there ever any differences because of the prominent position, or did the stock majority ever have any effect, or did IG ever have to exploit it on any important occasion?

A.- I know of no case of any differences, nor do I know of any case in which any reference was even made about the fifty one percent majority.

Q. When Francolor was founded, the French brought in the French Dyestuff factories, and Farben, as you say, contributed different processes of manufacturing, and had to pay for the fifty-one percent of the stock; and the French naturally had no payments to make. Now in order to evaluate the share of Francolor, the French Dyestuff factories first had to be evaluated. Can you tell us on what basis the Dyestuffs factories were evaluated?

A. On the question of the evaluation of the Dyestuffs factories brought in by the Francolor and everything pertaining thereto, there was no detailed debate. After a relatively short time an agreement was reached that the value should be set at the turnover which Francolor would presumably have. One was acting on the experience that in the chemical industry, especially in the Dyestuffs industry, capital, that is to say, the invested capital, was about equal to the turnover. On this basis an evaluation of 800,000,000 French Francs was arrived at, which more or less corresponded to the presumed turnover.

Q. You spoke of experience. Do you know whether this method of evaluation was frequently used in Europe in the Dyestuffs field?

A. I could not give you a definite instance, but I do know that the question was repeatedly emphasized, that is, that the turnover was equal to the capital, that was the customary calculation, a calculation which the French recognized.

Q. On this basis Farben had to pay them for the fifty-one percent of Francolor. How did it happen that this payment was not made in cash through the German-French Clearing House but was made in Farben stock?

A. The original idea was that the assets acquired by Farben be paid for in cash, that is to say, through the German-French Clearing House, but in the negotiations of January 1941, Farben suggested that the payment not be made in cash but in the form of Farben stock, merely to be accommodating. The French were very pleased about this suggestion. The question was important as to how this stock was to be evaluated. A

rate of 160 percent was decided upon. At that time, that is, 1941, this involved further consideration on the part of Farben towards the French, because the Stock Exchange rate of Farben stock in Germany was considerably higher. I believe, it was about 180 or 190 percent.

Q. What was the attitude towards capital investment in the form of Farben stock at the time? How did the French look at it?

A. Farben stock at that time was definitely the best possible investment in Germany. So far as I know, the French considered an investment in Farben stock extremely advantageous.

Q. Now, Dr. Kuepper, the Prosecution does not quite agree with you, and has pointed out that the French received only one percent of Farben capital.

A. R. SPEICHER: Objection.

THE PRESIDENT: That is not a very serious departure from recognized procedure, but your objection is sustained. Go on and just ask the question without your remarks about the Prosecution agreeing, Dr. Siewers.

DR. SIEWERS: Mr. President, I thought that it would shorten the examination if I simply quoted the contention of the Prosecution, which clearly shows that this point is relevant.

THE PRESIDENT: If we get into that field the Prosecution may contend you misquoted them, so the safer thing to do is just to ask the questions and we know and the record discloses that the contention of the Prosecution will be able to fit the evidence where it belongs.

DR. SIEWERS: Very well, Mr. President, I will do that.

BY DR. SIEWERS:

Q. Altogether Francolor received one percent of the Farben shares. So far as you can see without exact figures before you, does that correspond to the value of Francolor? That is to say, the value of participation in the French Dyestuffs business?

A. It would be difficult to give any exact figures here and I am not familiar with such figures, but I do know that the French Dyestuffs

business before the war amounted to only a fraction of the European Dyestuffs business of Farben and that in turn the Dyestuffs had presented only a fraction of the total volume of the Farben business.

Q. Dr. Kuepper, in addition to that it was agreed in the contract that Francolor could not sell the Farben stock without the approval of Farben. As a lawyer, do you consider this an improper, or an economically justified agreement?

A. The purpose of the transaction was among other things to establish a mutual obligation. So far as I can recall, this word "obligation" was actually used during the negotiations. In the case of such obligations it was customary for stock owned by both sides to be blocked, that is to say, that the possibility of selling this stock be restricted. The consequence was that not only were the French obligated not to sell the IG shares they had acquired in this way, but that Farben, too, was obligated not to sell their Francolor stock. The only exception was to sell this stock within the group, that is, from Kuhlmann to Saint Denis, and from Farben to certain subsidiaries. This obligation of Farben not to sell Francolor stock was even put down in the articles of Association of Francolor.

Q. Can you tell me what advantages the French had under the Francolor agreement aside from those already mentioned?

A. The contract contained a number of advantages for the French group. I believe that the most important advantage to the French was that Farben was obligated to make scientific knowledge available to the French group, and that contribution of French processes manufactured and protected by patents; licenses on these patents had to be given to Francolor, but under half of the normal conditions. A further advantage to the Francolor was that Francolor received a sort of production guarantee. I believe that was 7,000 tons of annual production, which were of some importance in the Cartel contracts, too. The Cartel idea was thus continued in the Francolor agreement. In addition to that, so far as I recall, Francolor also received apparatus, and technical suggestions were

actually given, and, I don't remember exactly at the moment, but I believe certain deliveries of preliminary production were provided for, a very important advantage to Dyestuffs factories. These I believe are the most important points. To go further into detail, I would have to go through the whole contract.

Q That will suffice, Dr. Kuepper. I should like to come back to an expression which you used. You spoke of capital obligation, "Kapital I have just been informed this was translated "obligation" and that this does not quite correspond to what you apparently mean. Can you, perhaps, explain that in German or give us the more customary English term?

A I would suggest "mutual exchange of shares."

Q That is what is called "kapital verflechtung" in German.

A Yes, approximately.

Q Dr. Kuepper, in Book LVIII, page 42 in the German text, 36 in the English, the following provisions is made in the contract and I quote:

"At the third meeting on the 12th of March 1941 in Paris Farben stated that they would waive their monopoly rights for production in dyestuffs factories in France."

Now, did this waiver come about? Do you recall that?

A The French government expressed the misgivings that by the foundation of Francolor a monopoly would be created in France. Without long negotiations Farben declared that they would waive such a monopoly -- the French expression, I believe, was that they would waive the "Monopol de Fait," as well as the "Monopol de Droit"; that is, the factual as well as the legal monopoly.

Q Do you recall that during the course of war Farben underwent a readjustment of capital and at the same time an increase of capital by the issuance of new stock -- and when was this?

A It was in 1942, I believe, when the Farben capital was readjusted and at the same time an increase in capital was affected.

Q At this time Francolor already owned Farben stock. When new stock is issued every stock holder has the right to choose whether he will acquire the new stock or sell his right of acquisition. Did the French also have this choice? What did the French do in this respect?

A In this respect the French had exactly the same position as any other stock holder of Farben; that is to say, they could either exercise their right of acquisition or they could sell it.

Q And what did the French decide to do?

A As I recall, they exercised their right of acquisition and increased their ownership of Farben stock. They became to an even greater extent the largest group of stockholders within Farben.

Q To your knowledge, did Farben take any apparatus or any valuables from the French dyestuff factory?

A I know of no such case. On the contrary, I believe I recall that Farben supplied apparatus to Francolor.

Q Could the French dyestuff factories work during the entire war?

A French industry had great difficulties in general at that time, the difficulties of production resulted especially from the coal situation; with the aid of Farben Francolor was able to continue production or to resume production. As far as I recall, Farben helped by obtaining allotments of coal for especially important purposes and this coal was also used for the dyestuff factories which are not very essential for a war.

Through all these measures Francolor was put in a position, in the first year of its existence, to operate at a profit and I believe that a dividend was declared for the first fiscal year.

Q After the collapse of Germany, did Francolor continue to exist or was it dissolved?

A I know this only from newspaper reports or hearsay but I understand that Francolor exists just as it was created at that time in collaboration with Farben.

Q You said yesterday that the first negotiation, or the first two negotiations, took place in November 1940 in Wiesbaden between Farben and the French and the other negotiations took place in January 1941 in Paris.

How long did the negotiations last altogether and when was the final contract concluded?

A The negotiations concerning the foundation of Francolor lasted many months. They were made more difficult by the fact that on important points the French government had to be consulted. Altogether the negotiations lasted about one year until the contract was finally signed.

Q Will you please look at the Francolor contract which is in the book before you, Book LVIII? This is Exhibit 1255, Book LVIII, German pages 51 to 62, English pages 53 and the following and the record with it, pages 63 to 67 in the German, pages 55 to 58 in the English and the articles of association -- that is Exhibit 1256, page 68 to page 96, and in the English page 59 and the following.

Now is this document, a copy of which you have before you, a copy of the original contract?

A No, this is not a copy of the original contract. The articles of association were in French, as is natural, and the contract concluded between Farben and the French group, the so-called "conversion," was also in French. We had a German translation prepared for our use at the time but this is not the German translation. This seems to be a retranslation from the English and, as far as I have been able to see -- I have been shown parts of it -- this translation is very poor and, in many instances, misleading.

DR. SIEGERS: I would be grateful to Mr. Sprecher if it would be possible to obtain the original French text or the German translation which was prepared at the time since I will probably need it for argumentation later. I do not require it necessarily at the moment.

MR. SPEECHER: We are checking immediately to see what we have in that connection.

DR. SIEGERS: Thank you, Mr. Sprecher.

Q. As Farben lawyer, did you formulate the articles of association or, together with the French lawyers? You have spoken of this once before but will you please tell us concerning the articles of association or the "Conversion" to avoid misunderstanding?

A. The contract, the "Conversion", as I just called it, resulted from cooperation between the French and Farben. The articles of association, on the other hand, in their essential parts and in all their formalities, were drafted by French lawyers and, as far as I recall, a university law professor in Paris had been entrusted with this formulation by the French. There were also a number of other French lawyers appointed by the French group who participated in drawing up these articles of association.

It is, of course, possible that some suggestions were made by us for some parts but, as far as I recall, this in general referred only to clarification of the investment values to be incorporated into Francolor so that nothing was forgotten in this respect.

As I said, in general this draft was made by the French which was, of course, very carefully checked and then we worked on it.

Q. In the negotiations and in the preamble of the contract, the French held the point of view that the cartel agreement which we discussed yesterday, concluded in 1927 or 1929, was still in effect, while Farben held the point of view that the cartel agreement was no longer in effect.

Do you know how Farben justified its point of view?

A. At the time — that is, at the end of 1940, when the French brought out that the German-French cartel agreement was still in effect — I examined this question thoroughly from the legal point of view. After careful investigation, I came to the conclusion that the agreement had been dissolved. Legally, this question was not very simple to solve because the contract had been made under Dutch law; but, if one considers the practical aspect, it is clear that such a contract must have come to an end for the following reason alone.

As I described yesterday —

MR. SPRECHER: Objection — irrelevant.

DR. SIELERS: Mr. President, may I say something about that? During the Prosecution's case this point was especially emphasized; that is to say, that Farben treated the French badly and used the device of declaring the cartel contract void, and I believe there can be no dispute about the relevance of this question. The Prosecution referred expressly to the preamble and to this dispute between the French and the Germans.

THE PRESIDENT: The objection is overruled. Go ahead.

Q. Will you please continue, Dr. Kuemper?

A. I said yesterday that the various cartels in the dyestuffs field represented a whole structure and a system of a whole series of cartels. At the beginning of 1940 the Swiss group had abrogated the cartel agreement with Farben and the English had abrogated the quadripartite cartel with the French; that is to say, stones had been taken out of this structure and, of course, such a structure had to collapse.

Moreover, the French were guilty of a number of violations of the cartel contract. They had penetrated into markets where they had no right. As far as I recall, contrary to all agreements, they had set up an agency in Switzerland. Moreover, they cut prices to a considerable extent and committed violations of the contract which under Dutch law fall under the concept of non-fulfillment of the contract.

According to the Dutch Civil Code which essentially corresponds to the French Code Civile, the contract was concluded under the dissolving consequences of non-fulfillment of conditions. If the contract is violated, it becomes void.

There are also a number of other reasons. I shall mention merely the impossibility of fulfilling it under the conditions which theoretically were only temporary but in practical effect had to make it permanently impossible to fulfill the conditions.

There were a number of other reasons but these were the main reasons why the cartel contract had to be considered dissolved. I still believe

today that these reasons justified the opinion that the contract was void.

Q. At that time did any state or industrial authority take a stand on this question?

A. We learned that the French association of chemical industries — I believe it was called "Union des Industries Chimiques" — wrote to its members pointing out that international agreements had been dissolved by the war. The French expression "Resilieu" was used and the French association advised its members to penetrate into this gap and take over areas which they had previously not been able to supply under their contracts.

Q. Do you know when this was?

A. This must have been at the beginning of the war. I do not know the exact date.

DR. DIZERS: Mr. President, I have the intention of including the opinion written by the witness at that time in my document book. Perhaps, I may give it to the witness now, merely for the sake of identification, and then I shall supply it with an identification number. For the record and for the Secretary-General, I shall say that it is Schmitzler Exhibit No. 5 and ask the witness — I beg your pardon — Schmitzler Exhibit No. 6 — and ask the witness to state whether this is the expert opinion so that it may be identified.

Q. Just a moment, witness.

MR. SPEECHER: Further for Dr. Siewers, I am now giving to Dr. Siewers NI-6886, which is the original French version of the Francolor agreement, and I can state for the record that the English translation, which is before you, was made from the original French.

THE PRESIDENT: The document handed to the witness will be marked as defendant von Schmitzler Exhibit No. 6 for purposes of identification in view of counsel's statement that he intends to have the document processed and to offer it in evidence.

Q. Do you confirm that?

A. This is a copy of an expert opinion which I prepared and it bears my original signature.

Q. Thank you.

DR. SIEBES: And I thank Mr. Sprecher — but perhaps he could give us the contract, too; but there is no hurry about that.

MR. SPEECHER: Here is the contract.

DR. SIEBES: Thank you.

Q. Now, can you tell me how the French justified their legal point of view in this matter?

A. The French stated that according to French law contracts were not dissolved by the war but were merely in abeyance. "Suspensu" was the word they used. This was something of a surprise to me since Dutch law was decisive. On the other hand, in case of a dispute each party can, of course, make its own "Ordre Public" prevail. According to German law, the contract was definitely dissolved. Even the Swiss had referred to their "Ordre Public" but what was good for the Germans had to apply to the French, too.

The point of view that the contract was only in abeyance was all the more surprising as, according to the statement of the French Chemical Association which I just mentioned, such contracts were not in abeyance but were quite clearly dissolved, "resilied", or at least had been designated as such by the Chemical Society.

Q Do you know whether, after the war, the leading men of French dye-stuffs factories were accused of collaboration and whether charges were preferred?

A I was told only recently that Mr. Frossard was convicted of collaboration and that he fled to Switzerland.

Q Dr. Kuepper, you spoke of violations of the Cartel Contract by the French. May I ask you in this connection if you know of any measures taken by the French, aside from the ones already mentioned, against Farben or its representatives in Paris, after the outbreak of the war in September 1939?

A After the outbreak of the war the French group began a sort of offensive against the sales organization of Farben in Paris. It was the "Sopi," which I mentioned yesterday. It was with justification called a camouflaged German company, but that was not the important thing. A denunciation of "Sopi" was made to the effect that "Sopi" conducted espionage for Germany against France. A thorough investigation was undertaken at the request of "Sopi." It was continued, after the occupation, by the French without any German intervention. The end of this whole matter was that the French group—I believe Mr. Frossard—personally made a sort of an apology to Farben later.

Q What did the French investigating authorities discover? How did the formal proceedings end?

A The investigation showed that the charges were groundless.

Q Was the firm confiscated?

A At the beginning of the war, as far as I recall, certain parts of the company were placed under a certain restriction, but it continued to operate.

Q Can you tell me how, according to the Francolor convention, French exports were to be regulated?

A The contract between Farben and the French group provided that Francolor was to be restricted to France, all French Colonies, and that

beyond that exports were to be made only to Belgium, Spain, and Portugal—I believe. As equivalent it was provided that Francolor was to have a certain annual production—7,000 tons—which have repeatedly been mentioned. It was also provided, as a basic possibility in the contract, that subject to agreement, according to the individual case, exports would be permitted to other countries too; and at the time this possibility of expanded exports was mentioned to the then French Government.

Q You say that a certain level of production was fixed. Did the French have any assurance for this production?

A -Yes, Farben had to make up any deficiency.

Q Was that the same idea that you mentioned yesterday, arising from the Cartel Contract?

A This was a continuation of the old cartel idea. This production guarantee, I believe, originated from the very beginning of the first Cartel Agreement of 1927.

Q And was this limited export agreement formulated in such a way that the production of the Francolor dye-stuffs factories was lower than before the war?

A No; when the markets were established in France, the French Colonies, Belgium, Spain, and Portugal this was done on the basis of the fact that Francolor would normally achieve approximately the 7,000 tons. Francolor was also protected by the fact that under this contract Farben was forbidden to deliver the products produced by Francolor to France and the French Colonies. Francolor was definitely protected in this respect.

Q Were these 7,000 tons of dye-stuffs the quantity that had been produced before the war—let us say in 1938?

A Of course, as usual, I cannot give you any exact figures, but I believe that was about the quantity.

Q Now, two final questions, Dr. Kuepper:

After the contract was concluded, did you talk to any of the leading

French men? When was the last time?

A After the conclusion of the negotiations I was in Paris several times, and I talked to Mr. Frossard—for the last time I believe in 1943.

Q You talked to him?

A Yes, at some length.

Q Did Mr. Frossard give the impression that he and the company were satisfied with the association and with the contract?

A Of course this was not said in so many words. I can only describe the impression which I gained. I can sum up this impression by saying that I have seldom seen a happier or more satisfied man than Mr. Frossard, in his enormous office on Avenue De George Sand, in Paris, at his desk, sitting in a corner, the proud general director of a dye concern.

Q Thank you; I have no further questions.

THE PRESIDENT: Now, gentlemen, may I observe on behalf of the Tribunal quite generally, we think it's highly important that you do not go over the same territory that has been so thoroughly covered by this witness. If there are any matters of great importance that you think ought to be brought out, of course, you have the privilege of doing that, but this witness has testified at considerable length, in great detail, and with clearness as to the outstanding features of the matter about which he was interrogated. I trust that it will not be necessary to admonish counsel not to go over the territory again. If there are any matters that counsel for the Defense deem of importance to their clients, that have not been touched upon and with respect to which they anticipate this witness may throw light, they may interrogate the witness further.

DR. GIERLICH: Dr. Gierlich for Geheimrat Schmitz. I have only a few supplementary questions.

BY DR. GIERLICH:

Q Dr. Kuepper, you have just spoken of the stock which was given at 160% in the contract, and you said that it was about 180-190% at the stock market quotation. Was the stock market quotation of I.G. Farben

stock, at the time, a free quotation, resulting from supply and demand?

A I know at a certain time—I'm not sure when that was—as a result of the German price controls the stock market fluctuations were restricted too; that is, stocks were not allowed to exceed a certain evaluation.

Q Do you know whether, at that time, German industrial stock had already been restricted?

A I am not sure, but I assume so because that was done rather soon.

Q Do you know what Farben stock value was on the blackmarket; that is, disregarding this blocked stock market?

MR. SPRECHER: Mr. President, we consider it so unimportant that we will stipulate to practically any figure which Dr. Gierlichs wants to make.

THE PRESIDENT: State your figure, Dr. Gierlichs, as you understand the facts to be, and we will save some time. Mr. Sprecher will agree to what you say.

DR. GIERLICH: The general opinion was, at that time, that Farben stock, disregarding the blocked stock market, was about 250, Mr. President.

MR. SPRECHER: We stipulate to that figure.

THE PRESIDENT: It is so stipulated.

DR. GIERLICH: Thank you.

BY DR. GILBLICH:

Thank you.

Q. Dr. Kuerner, do you know anything about the opinions expressed in the German industrial press about this contract?

A. I recall relatively little, but I do believe I can recall that it was considered very favorable for the French side.

Q. In this connection, were references made about the low quotations set for Farben stock, for example, in the Frankfurter Zeitung?

A. Yes, I recall that.

Q. As head of the Insurance Department of Farben - do you happen to recall what the insurance rates were for Farben in 1942?

A. Including all participations of Farben, toward the end of the war the insurance sums of Farben were between six and seven billion marks. One must consider that the insurance values did not include the real estate, the railroad tracks, etc.

Q. And what percentage did Francolor hold in the Farben stock after the increase of capital?

A. The percentage?

Q. After the capital increase?

A. I cannot say exactly.

Q. It was 1 1/2%. Then, in conclusion, I have only one question. Was the financial advisor of the Central Finance Administration of Farben, Mr. Reide, included in the Francolor negotiations in a way which enabled him to pass judgment on this transaction?

A. I myself never saw Mr. Reide at these negotiations.

DR. GILBLICH: Thank you. I have no further questions.

DR. BERNER (Defense Counsel for defendant Ter Meer):

Mr. President, I have only some supplementary questions affecting my client, Dr. Ter Meer.

THE PRESIDENT: Very well.

BY DR. BERNER:

Q. Witness, may I ask you in what form or in what way did Dr. Ter

Meer participate in the Francolor negotiations?

A Negotiations were under the charge of Dr. von Schnitzler and, in addition to him, but essentially for technical reasons, Dr. Ter Meer participated.

Q Can you tell me what Dr. Ter Meer's reaction was to the suggestion that Farben have 51% and the French 49% of Francolor?

A I recall a meeting where I believe this question came up for the first time. At this meeting, Dr. Ter Meer was rather violently opposed to a participation of more than 50%.

Q Do you recall whether Dr. Ter Meer later gave up his resistance?

A Yes.

Q Do you know the reasons for which he did so?

A He gave up his resistance. Of course, I do not know any technical reasons he may have had, but I do know that the other reasons I have mentioned, the strong weight given to the French by the French President, by the French personnel, equal distribution in the Verwaltungsrat, etc., were necessary to equalize this balance of 51%. I am sure that these reasons influenced Dr. Ter Meer in approving the 51% participation.

Q When you were examined by Dr. Siemers you said that Farben supplied the Francolor with apparatus. Do you know whether this had any effect on the French workers in Francolor?

A I am sure that this measure was intended to keep Francolor in operation or improve operations and to guarantee employment for the personnel.

Q Can you tell me whether Francolor was given any other technical assistance?

A I believe that that was done to quite a considerable extent. On various trips to Paris, I again and again met the technical men of Farben who were working in Francolor or were visiting there.

Q Were experiences and technical patents made available to

Francolor in addition?

A Technical experience under the contract, yes. Whether patents were given at that time already I do not know. I believe that in one case some mention was made of supplying of patents, but I know no details. That was outside of my department.

DR. KRAMER: Thank you.

Mr. President, on the subject of Francolor I have no more questions to put to this witness. I have asked for Dr. Kuevner as a witness for the personality of my client, Dr. Ter Meer. At the beginning of his interrogation yesterday we heard that Dr. Kuevner began his career in Farben in Uerdingen, the plant in which the father of Dr. Ter Meer worked. I am sure that he can give us some good information about the defendant. As I say, I have asked for Dr. Kuevner as a witness for myself. Since the witness is here and I will examine him only until eleven o'clock; I wonder if the Tribunal would be willing to have me ask him about the character of Dr. Ter Meer today.

THE PRESIDENT: That would be entirely proper. We would be glad to have you use this opportunity and save that much time and trouble in the future of bringing the witness back.

BY DR. KRAMER:

Thank you.

Q Doctor, I need not repeat that you began your career in Uerdingen. Did you meet Dr. Ter Meer at Uerdingen?

A Yes.

Q Did you remain in close contact with him?

A Since 1923 I have been constant close personal contact with Dr. Ter Meer.

Q Can you give me a general picture of his personality?

A Yes. In general, I can say that Dr. Ter Meer is a man of unusually extensive knowledge in his field and has special gifts in the economic field. What was outstanding in him was his great objectivity. Dr. Ter Meer was interested only in facts, not in persons.

I know that very well myself because, in spite of our friendship, it was Dr. Ter Meer of all people who objected to my receiving a raise in salary. He was opposed to my getting a raise in salary.

Q Do you know whether Dr. Ter Meer was in America frequently?

A Yes. Especially before the war, he made regular trips to America to visit the dye stuff factories there.

Q Did he ever say anything to you about his impressions gained over there?

A Dr. Ter Meer always had great admiration for the enormous technical achievements of America. I know that, for example, because I remember the following. Right at the beginning of the war, I believe it was still September 1939, we were at a meeting together when Dr. Ter Meer said: "I believe this will all come to a bad end. A few years will pass, but at the latest then the Americans will come with their planes and smash everything here." This statement resulted from his admiration for American achievements and was all the more remarkable since it was made in September 1939.

Q What was Dr. Ter Meer's attitude towards expansion attempts on the part of the firm or the general aspirations in the Third Reich?

A Dr. Ter Meer considered the expansion of Farben expeditions only if it was absolutely essential from the technical point of view. He was very definitely opposed to all expansion plans and ambitions.

Q Do you know anything about his attitude when he heard, for the first time, of the Four Year Plan?

A Here again I can tell you something about it because I happened to be in Dr. Ter Meer's room when the afternoon papers in Frankfurt brought the news that at the Party Rally in Nurnberg the Four Year Plan had been proclaimed. Dr. Ter Meer was surprised. It was doubtless completely new to him and we discussed what work would result for him in his field from such a plan.

Q I have noticed that Dr. Ter Meer who within Farben and in Frankfurt and in Germany had quite a high position held very few

official or semi-official honorary positions compared with other gentlemen. Can you give me any explanations for this fact?

A He was definitely opposed to anything official, to a planned economy. He was and is the typical individualist. I might say a liberal economist. He does not like to have his plans made by other people. This was no doubt the reason why he was on very few industrial committees of a semi-official nature, and I believe it was relatively late and only in the Economic Group Chemistry that he was represented in the management.

Q Can you tell me for what reason Dr. Tar Meer went to Italy in the fall of 1943?

A For me and for many other persons in Berlin this was a surprise and we could not quite understand it. I asked him somewhat later why he was in Italy. I said there was enough to do in Germany. He said for his field of work there was nothing to do in Germany, at a time when other people were ordering what, where and how manufacturing was to be done.

Q And a final question: Can you tell me anything about Dr. Tar Meer's joining the Party and his general attitude toward the NSDAP?

A I know that Dr. Tar Meer did not join the Party on his own initiative. I don't remember the exact time - it may have been 1937 or 1938 - but I know that he was approached and asked to join the Party. I cannot say who that was. What I do recall, however, is a remark which Dr. Tar Meer made to me at the time which ran about as follows: "I told the people if I have to join their stupid organization I would make the condition that I do not have to attend their meetings."

Q Doctor, I have one more question. His general attitude is indicated by "this stupid organization", but can you tell me a little more about his general attitude towards National Socialism?

A I have already said that Dr. Tar Meer was a very objective person. For this reason the National Socialist system with all its ideologies was opposed to his nature and that was expressed in many

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conversations.

DR. BERNHARD: Thank you. No further questions.

THE PRESIDENT: May we suggest that the recess would be an appropriate time for counsel for the defense to survey the situation and organize the further interrogation of this witness in a manner that can conserve our valuable time.

The Tribunal will now rise.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

BY DR. SILCHER (Counsel for von Knieriem)

Q. Dr. Kuepper, a short while ago you were talking about the assurance values of Farben to be about six to seven billion. How high was the original stock of Farben at that time?

A. I believe somewhat like 1.3 billion.

Q. What is the percentage value for an I.G. Farben share?

A. About four to five percent.

DR. SILCHER: Thank you very much.

THE PRESIDENT: Anything further, gentlemen of the defense? Very well, the prosecution may cross-examine.

CROSS EXAMINATION

BY MR. SPEECHER:

Q. Dr. Kuepper, you testified yesterday that one principal reason for Farben's demands in connection with the Francolor transaction was to find a new form of relations between the French and German dye-stuffs industries, since the old cartel arrangement had proven unsatisfactory because of the French behavior under it. You said that a cartel connection without real leadership by Farben did not seem possible. Let me ask you this. Did you feel that the Francolor convention in fact did give real leadership to Farben?

A. I believe to a certain extent it did. The leadership arose also from the fact that Francolor's export was confined to certain countries and an export to any countries beyond that could be carried out only on the basis of an understanding reached with Farben. Because of this necessity for an understanding they were able to agree on measures in order to eliminate improper disturbances that had arisen in the past.

Q. Did you hear at the time whether or not it was the defendant von Schmitzler who coined the phrase "Fuehrungsanspruch", or claim to leadership?

A. I do not know who coined that phrase. It was used so generally

that I really cannot tell you any more who was the author of this expression

Q. Now, Saint Denis was one of the three French dye stuffs concerns effected by the Franco-German negotiations and later included in the Franco-German convention. Is it not true that the so-called historical reasons on which Farben partly based its claim to leadership against the rest of the French dye-stuff industry did not apply in any measure with respect to Saint Denis?

A. That is correct, and in the arbitral commission meeting in Wiesbaden in a memorandum submitted to Farben this fact was emphasized expressly. However the memorandum also stated that because of the mutual connections that existed between the Saint Denis and the other French dye-stuff factories, and because of the old cartel relationship, it was an economic necessity to incorporate Saint Denis into this complex of questions.

Q. In that connection did not the representatives of Saint Denis argue very vigorously that the predecessor firms of Germany, the predecessor firms of Farben, after the first World War, would have opposed very vigorously any claim by Saint Denis to German leadership by financial participation of Saint Denis in the German companies within Germany?

A. I do not remember that. I merely knew that at the time Saint Denis emphasized their point of view particularly that they did not fit into the historical development. I do not remember any other details.

Q. I would like to show you Document II 4886, which is already, Mr. President, in our Document Book 53, English page 99, German page 103.

THE PRESIDENT: What's the exhibit number please?

MR. SPEECHER: It has not an exhibit number. I shall assign one immediately.

THE PRESIDENT: Very well.

MR. SPEECHER: That will become Prosecution's Exhibit 1853 and we will offer it at this time, since copies have long been available to all parties.

THE PRESIDENT: Then 1853 is in evidence.

MR. SPEECHER: Will you look at the last paragraph but one, please.

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Mr. President, I should make a qualification here. The memorandum I have shown the witness is a combination of an affidavit by one Thomsen and the protocol or the memorandum of Saint Denis which was handed over to the defendant Von Schmiedeler on 30 January 1941. I should restrict my offer to the protocol attached, rather than to the affidavit because we don't intend to offer that at this time.

THE PRESIDENT: Very well then, the record is clear as to the offer of the prosecution.

BY MR. SPEECHER:

Q Dr. Kuepper, will you turn then to the memorandum that is attached to Thessmer's affidavit and read the last paragraph but one, and then I will ask you if that memorandum was called to your attention.

A This is the memorandum that I just mentioned myself.

Q All right, thank you; that is satisfactory then.

Now, Dr. Kuepper, have you not stated yourself that Farben intended to make its claim to leadership over the French dyestuff industry in 1940, whether or not there was any alleged historical justification?

A I did not say that in my testimony either today or yesterday.

Q That is correct, but I ask you if you said it before.

A During my interrogation by the Prosecution I was asked whether Farben would have proceeded along the same lines if these historical developments had not been of that nature. In answer to that I said that it might have been possible, but to this I should say that this is only a hypothetical question since that possibility was not at all discussed in Farben.

Q Concerning the cartel agreement with the French, do you recall an article in the official Nazi newspaper, the "VoeIdischer Beobachter" (edited by Rosenberg), by a Farben Vorstand member, which praised the German-French cartel agreement as "satisfying to the fullest extent the justified claims of both parties"? Do you remember that?

A As far as I remember, this article was written by Dr. von Schnitzler. He celebrated the 10th anniversary of the Franco-German cartel relationship. And just like all other anniversary speeches, it intended, first of all, to render praise, and there was certainly no cause to publish these difficulties that undoubtedly had always existed in the Franco-German relationship in a newspaper on this occasion.

Q Well, I will mark that document, which is NI-1114, as Prosecution Exhibit 1854, and I will now show you the crucial sentence which I

have just mentioned so that you can see its context.

THE PRESIDENT: Are you marking a document for identification or are you offering it into evidence?

MR. SPEECHER: We intend to offer it. I am not certain we have all the copies required, Mr. President.

THE PRESIDENT: Well, in order to keep our record straight, is there any objection to it being received into evidence on your promise to supply the necessary copies? I mention that because it is somewhat confusing to mark documents for identification only and then having to resort to them again for the purpose of getting them into the record. If there is any reason for not receiving that document, we will follow the practice of marking for identification only.

DR. SIEBERS (Counsel for defendant von Schmitaler): I am in agreement, since Mr. Sprecher already gave me a copy.

THE PRESIDENT: Very well, then, the document marked Prosecution's Exhibit 1854 is in evidence.

BY MR. SPEECHER:

Q Now, Dr. Kuemper, with respect to the sentence that I quoted from, is it your position that that was window dressing, or did it state the true fact as you had heard it from Dr. von Schmitaler, prior to 1937 when this article was published?

A I already mentioned that the very considerable difficulties that had always existed with the French group are not mentioned in this article, but that, in my opinion, it was an exaggerated favorable description of an actual relationship. May I point out one sentence here which is conspicuous? This sentence is: "Above all, it was one of the predominant aims of the understanding not to influence the customer in any way in his freedom of making dispositions but, on the contrary, to promote his interests". In fact, the freedom to make dispositions was always somewhat restricted even for Farben within the Franco-German cartel. Because of their bad sales organizations, the French were always below their sales quota. This resulted

in the fact that in very many markets numbers of customers had to be transferred to the Francolor and the French group under the greatest difficulties and thus Farben was not permitted to deliver any goods to these customers anymore. I myself considered this a disturbance in the freedom of disposition on the part of Farben.

Q Now, before the negotiations with Ambassador Himmann began, tell us when you were first informed that Farben desired to delay the opening of discussions with the French so that the French would be ripe for suitable negotiations? When did you first learn of that?

A The first event was the one already mentioned in my testimony, when Monsieur Frossard approached Dr. Kramer --

Q Sorry, Dr. Kueper, will you try to answer the question? I am not asking for a history of the entire negotiations; I am asking you for a specific question. Now, I will repeat the question exactly as I placed it to you before:

Before the negotiations with Himmann began, when were you first informed that Farben desired -- that Farben desired -- to delay the opening of discussions with the French so that the French would be more ripe for suitable negotiations? And if you didn't know about it, just say "I didn't know."

THE WITNESS: I do not recall the exact date.

THE PRESIDENT: Mr. Prosecutor, the Tribunal, as an exercise of its own discretion, is going to sustain an objection to that question as unfair to the witness. You try to commit the witness to a promise that he may not wish to make. You have suggested the subject; now, if you want to ask him directly what he knows about it or what did occur -- but to undertake to --

MR. SPEECHER: All right.

BY MR. SPEECHER:

Q Did you at any time, Dr. Kuepper, hear that Farben desired to delay the opening of discussions with the French for the reason that the French would become more ripe for negotiations, with delay?

A Yes.

Q Thank you. Now, when did you first hear of that?

A I said already that I do not know the exact date anymore.

Q Do you know approximately how many months that was before the first negotiations before Ambassador Himmann took place?

A I can only give you a very approximate estimate from memory — approximately two or three months.

Q Now, during that two or three months' period, did you know that any Farben officials took steps with the German occupational authorities to limit the French dyestuffs industry in resuming production without the assistance of Farben? Did you know that?

A I do not know that such steps were undertaken.

Q Now, I would like to mark Document NI-5810 as Exhibit 1855, for identification and you are now being shown a German copy of this document.

This is found, Your Honor, in Document Book 57, English page 60, German page 68.

Dr. Knipper, may I first ask you if the marginal notes at the top and the little handwritten note at the side are notations in your own handwriting?

A In the upper lefthand and upper righthand corners — yes.

Q And now will you pass down to paragraph 4, which is over on page 74 of the German, page 61 of the English, and I will ask you if the handwritten note on the left hand side is also in your handwriting?

A Yes, that is my handwriting. It cannot be deciphered here what is written.

Q Well, you said yesterday you couldn't recall who first had the idea about the 51 per cent. participation; does paragraph 4 refresh your recollection in that connection?

A No, it doesn't help me to refresh my memory, because I can decipher my handwriting on the second copy you handed me. I see there in my own handwriting that "it was pointed out in the committed meeting of the 4th of November that the President and Director General, according to French Corporation law, are leading, and therefore we must ask for 51 per cent." From that it does not arise that this was the first time where this 51 percent. was suggested, but merely that it was one of the reasons why this 51 per cent. was demanded.

Q Now, is one of the other reasons why the 51 per cent. was demanded, because Farben intended to close down certain lines of production in the French dyestuff industry and it was thought that the French would resist this if they had financial control or even 80 per cent. control, is that also one of the reasons?

A I don't know that any more, because these technical matters are beyond my knowledge. It is possible they were discussed. I have no definite recollection.

Q Dr. Kueper, was it discussed in any memorandum which you saw at the time that "drastic measures were to be taken which the French would resist unless Germany had 51 per cent. participation"?

A I have to say the same thing as I said before, it is possible but after seven years I don't know these technical details any more, because these technical things were not my affairs.

Q Suppose you look at the full text of the memorandum just beside the note in your own handwriting which you made, and state whether the

statement, "Whether a company with 50 per cent. of the shares still in French hands will not easily submit to drastic measures;" do you remember that now?

A I remember that I had read something like that at the time.

DR. SIEMERS: If it was translated correctly then a typical word was used by Mr. Sprecher in German, "Drastic." I was not able to find this in the text. I don't know whether the witness was able to see that. I thought I would like to clarify the exact wording of this sentence.

THE WITNESS: I can only read now, "even now considerable production restrictions will become necessary, since there is no corresponding demand of goods at present in France." I take this to mean that this was the situation in France, which made a restriction in production, absolutely necessary, but that it was not a measure of Farben.

DR. SPEICHER: Mr. President, if Dr. Siemers has a disagreement with the translation then I would suggest we have it covered in the normal way.

THE PRESIDENT: In any event the witness says what he understands it to be. That is what we are interested in now. The document will speak for itself if any controversy arises. After all, this is cross-examination and the witness has construed the language according to his own understanding.

Q Dr. Kuehner, you understand English; I will ask you whether or not the word "Einschneidend" that appears there is not fairly translated as "encroaching" or "drastic?"

A May I ask you were that word "Einschneidend" is to be found? I cannot find it.

Q It will be shown to you and perhaps you would like to translate the whole sentence for us?

THE PRESIDENT: It is hardly fair to say that to the witness. The witness is not to have the burden of any translation. If it is desired then the witness should be asked if he will rather than commit him to do something.

M. SPICER: I am sorry, Mr. President, I intended no reproach. The difficulty was the witness before was looking at another sentence.

THE WITNESS: It would be correct to translate the word "einschnaidend" with "encroaching," but I am not expressing any opinion as to the sense of the sentence which is of a technical nature, and which I do not understand.

Q Would it be possible to call two meetings of the assembly of stockholders underneath the Franco-German Convention within three weeks, Dr. Kueper?

A Yes.

Q That would be called on 15 days' notice upon the request of the majority of the stockholders, is that correct?

A I believe that was the wording of the articles of incorporation.

Q Now, was it your testimony yesterday that the French desired to reduce the power of the president underneath the Franco-German Convention, or had it been the initiative of Farben on the German side?

A I said yesterday already that as far as I remembered no desire was expressed by the German party to restrict the power of the French President in any way. In the Convention, as far as I know, nothing of this nature was contained. That convention was drafted in by way of cooperation of both parties. The restrictions of the powers of the President are laid down in the Articles of Incorporation, and I said that the draft for these Articles of Incorporation originated with the French as far as I remember. I do not remember any negotiations.

Q Now, is it true that the principal points that Farben desired in the Franco-German Convention were made clear and had been accepted by March 1941, even though the drafting of the final agreement as to its formal paragraphs was not concluded until some months later, is that not true?

A Certain main points had been clarified by the end of March. One of these main points was the 51 per cent. participation. The position of the French-President, the French personnel, equal particip-

ation in the Verwaltungsrat, renouncing of the Monopol de Droit and Monopol de Fait, but otherwise the Convention had to be negotiated about for quite some time. The agreement, with regard to the exchange of experiences, the delimitations of spheres, the definitions, etc., had become of such a complicated nature that we had to negotiate about the agreement for months.

Q Well, now, you submitted an expert opinion about the validity of the Cartel agreement; what was the date of that? - The document that was marked for identification, do you recall?

A It was the end of 1940. I don't remember the exact date.

MR. SPENCER: The Secretary has shown us it bears the date October 31, 1940.

Q Now, did it become clear to you, as a Farben lawyer, shortly after this time, in any event, that the policy with respect to the breach of contracts or the validity of contracts caused by the war was to be determined in each case according to whether or not German interests were served, regardless of the actual law of the matter? Did that become clear to you from any communications within Farben?

A From the following it became clear to me that in actual practice all cartel agreements were longer in force and because a decisive shifting in markets had occurred and that it was no longer possible to take up exactly the same methods that had been used before the war. But this situation did not influence my legal interpretation in any way. I did not receive any mission to render any expert opinion with a definite result in mind. I said already this morning that the legal drafting of this expert opinion corresponded with my honest opinion and still does so today.

Q Witness, I show you Document No. HI-8450, which I shall mark for identification as Prosecution Exhibit 1056.

MR. SPRECHER: Your Honors, this is already in Document Book 59; English page 65; German page 100; and I will offer it since proper copies have long since been in the hands of all parties.

Q Dr. Kueper, I want to point out that, of course, this memorandum -- I want to point out that this memorandum was dated in February 1942 and was after you had given your memorandum, but is it right that the first block on the stamp to the left indicates that you received a copy of this memorandum? "Dr. K" -- Where it says "Dr. K."

A Yes. "Dr. K." refers to me, but I did not initial it. That's of no importance here because I do know this memorandum anyway.

Q Thank you. Were you a member of the Juristische Abteilung, the Juristic Department, yourself -- that put out this memorandum? Look at the end of the -- Why was that put out on the stationary of the defendant von Knieriem?

A I can not see that this was issued on Dr. von Knieriem's stationery. The addressee of this memorandum is Dr. von Knieriem; that is all.

Q I beg your pardon. I was looking at the German and I sometimes become confused.

Now, with respect to reports concerning developments of Francolor, you attended meetings of the Farben Dyestuffs Committee when the defendant von Schnitzler reported on the progress of the negotiations. Did, as far as you could tell, the defendant von Schnitzler hold back any secrets or any questions of strategy with respect to how the Germans were proceeding in negotiations with the French?

A I know nothing about that.

Q You were present, and I merely ask you if you believe that the defendant von Schnitzler was holding anything back so far as you could observe.

A No. On the contrary, I knew that Dr. von Schnitzler always very much liked to talk quite frankly about everything that he knew. I never had the impression that he was holding anything back.

Q In connection with the restriction that the French could not sell the shares in Farben which they received in connection with the Francolor convention, do you recall any internal memorandum of Farben which stated that under no circumstances were these negotiations to give the French any free capital so that they could re-invest themselves and thereby acquire further independence from Farben?

A Yes, that was stated at some time. I don't know exactly any more in what connection it was stated.

Q Now, just before the war, how much of Farben's insurance was covered by English insurance companies? The total insurance of Farben?

A It was arranged in a somewhat difficult complicated way, because it consisted of a basic insurance and an excessive loss insurance that depended on the extent of damage. The average might be

given with about 35 to 40 percent covered in England.

Q Did that cover properties abroad or properties within Germany?

A In the fire insurance only German possessions, were insured; in a stock insurance in which we had an excess of loss insurance in England by which stocks of all over the world were covered and always again with an excess of loss insurance.

Q And you state it covered up to what percent?

A In the case of the fire insurance, about 40 percent. In the stock insurance, just as in any excess of loss insurance, no percentage can be given; it depends on the extent of the damage.

Q Now, I would like to search your memory on one point which should be of some assistance to us concerning Goering's speech which you and Dr. Siemern discussed yesterday. The Prosecution has not found any copy in the German publications at its disposal, but we could be wrong. Do you remember in what newspaper or what other periodical it appeared, Dr. Kuepper?

A No, I can not tell you that, but if such a speech was published at that time, then it was printed in practically all the newspapers. I know that it was published from the fact because of the final remark, "We are just merely not shooting as yet," was a by-word in Germany.

Q Well, was that -- Did the publication take place before or after the time von Schnitzler -- the defendant von Schnitzler reported to you about the meeting with Hitler and Goering? Was it published afterwards or before that time?

A I do not know that any more.

MR. SPEECHER: No further questions.

THE PRESIDENT: Is there any redirect examination of this witness?

It would be most fortunate if we could conclude this examination by our noon recess time, and if necessary to run over two or three minutes, we would indulge that, Doctor.

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DR. SIMERS: Mr. President, may I point out now already that I consider it impossible that I shall be able to finish in three or eight minutes, but that I will take quite a little longer, but I will leave it to the Court, whether I should interrupt the —

THE PRESIDENT: Well, under the circumstances, the Tribunal shall now rise for its noon recess.

(A recess was taken until 1330 hours.)

THE MARSHAL: Persons in the Courtroom will find their seats, please. The Tribunal is again in session.

MR. DUBOIS: Mr. President, I have been discussing with Dr. Helte, in connection with the preparation of his defense for Dr. Hoerlein, the question concerning allegations in Section F in Count I, with respect to atabrine and sulphur drugs. Now, we believe that the Tribunal made the situation in this respect clear when it stated on the opening day of the Defense case that if there are allegations or charges of fact in the indictment that have not been established by proof on the part of the Prosecution that there is no obligation or burden on the Defense to meet the unsustained allegations. However, in order that there may be no misunderstanding whatsoever with respect to this matter in connection with the preparation of the defense of Dr. Hoerlein, the Prosecution hereby stipulates that it is of the view that the evidence which it has presented has not established its burden of proof with respect to the allegations contained in Section F of Count I insofar as such allegations relate to atabrine and sulphur drugs.

THE PRESIDENT: Very well. The defense will take notice of that as a proper limitation upon the scope of the Defense -- of the proof that may be offered to meet the indictment.

REDIRECT EXAMINATION

DR. KUEPPER

BY DR. SIMERS (Counsel for defendant von Schmitzler):

Q. Dr. Kuepper, the Prosecutor put to you an argumentation -- the Prosecution had requested and obtained from you in an affidavit -- that is the argument whether independently of historical development, Farben had put forward any *Fuehrungsanspruch* any claim to leadership. You answered that you had answered it in the affirmative at the time but that the case is so hypothetical that one can hardly speak of it. Now, I should like to ask you, do you recall that when you were interrogated at the time in this respect by the Prosecution you added, and I quote it: "That does not prevent my having considered these historical reasons

honorable and I am still considering them honorable?"

A. Yes, that is correct.

C. From Exhibit 1245, Book 57, page 75, I should like to read to you a paragraph from the Farben memorandum which was brought up for discussion at the time. It refers to the question which Mr. Sprecher asked of you. It reads: "The claim to leadership of the German aniline dye industry in Europe results from the historical development on the one hand and from the fact, on the other hand, that up to the outbreak of war in 1939 German aniline dye industry had about 55 to 60 percent of world dyestuffs exports. Moreover, Farben has always been the only decisive factor in the international settlement of prices. All other manufacturers, including Switzerland, adapted their prices to those of Farben. The firms in the cartel arrangement with Farben followed Farben's price policy. The outsiders tacitly --

I beg your pardon, Mr. President.

THE PRESIDENT: Is there some difficulty in the sound system?

INTERPRETER VON SCHON: No, your Honor.

DR. SIEMERS: Mr. President, I beg your pardon. I had given the book numbers. Please excuse the delay.

THE PRESIDENT: Very well.

DR. SIEMERS: Have you found it? Exhibit 1245 is the German Document Book 57, page 75.

THE PRESIDENT: Perhaps, Dr., there may be an error in your statement. Check your Document Book and see if your citation is correct.

MR. SPEECHER: That is page 64.

THE PRESIDENT: Thank you.

Now you may continue.

DR. SIEMERS: "The claims of the German aniline dye industry to leadership in the European area based firstly on history and secondly on the fact that up to the outbreak of war in 1939 the German aniline dye industry supplied approximately 55-60% of world dyestuff exports. Moreover:

Farben has always been the sole decisive factor in the fixing of international prices. All other producers, including Switzerland, modified their prices to correspond with Farben's; the firms in the Farben cartel followed Farben's price policy in accordance with previous agreements, while the 'outsiders' did it of their own accord, which in their case meant that they tried to snatch an advantage for themselves by cutting their prices to a greater or lesser extent in a way which was neither warranted by the facts nor based on their own independent calculations. The standard which Farben has attained in scientific and practical technical developments is in keeping with the leading position which it holds in the international dye trade. Germany's technical superiority is also undisputed."

This was said in November 1940. Is that a correct reproduction, witness, of the ideas justifying the claim to leadership, aside from historical development?

A. Yes, that is a correct presentation.

Q. In cross examination you spoke of the difficulties with the French in the cartel in peacetime. You described them in the direct examination and you said that they were in their technical field. In spite of these difficulties did Schmitzler maintain his favoritism toward the French which you mentioned?

A. Yes, he always had a most friendly relationship with Mr. Froese, also Mr. Duchesne, Mr. Tesner, and other heads of the various French dyestuff factories.

Q. Exhibit 1855 was showed to you this morning. That is the document dealing with the question of whether it would be 50 or 51 percent — On page 3 you will find the following sentence: "For the participation conditions the following possibilities are under discussion: (a) 51 percent," and then the reasoning and "(b) 50 percent in the producing company and 51 percent in the sales company." On the remarks on these two points you will find the following sentences: "51 percent participation by Farben would give Farben primary responsibility for the fate of the

enterprise. In view of future development possibilities in France, this is not to be underestimated.⁸ You said that initially some gentlemen were inclined to participate to 50 percent. As far as you recall was this the idea that was in the foreground at the time?

A. Yes, at least that was one of the ideas an essential one.

Q. When you first saw this document, did you see the date?

A. I believe it was October 1940.

Q. It was 31 October 1940. As the examination by Dr. Sprucher showed, this document indicates nothing of the idea that 51 percent was wanted as an equivalent for the fact that the president of the company held a pre-eminent position. Why was this?

A. I believe that is because at this time the Vichy law which proclaimed the pre-eminent position of the French president was not yet known.

Q. Do you recall that there were two laws?

A. Yes, sir. One, I believe, was of September and one of November 1940.

Q. Was it because you wrote this idea on the margin by hand later?

A. Yes.

Q. On cross examination you were asked whether Schnitzler kept secrets and kept strategic questions secret. You said, "No, on the contrary." Now, to supplement that I should like to ask you if Schnitzler had known Hitler's plan -- had known that aggressive war was coming, would he, in view of the nature of your collaboration, have told you?

A. He would have told not only me but he would have made it known at the meetings of the dyestuffs committee and emphasized it.

Q. One word about the Goering speech. You said that it was in all the newspapers. Do you happen to recall the fact that the speech was published in the "Times"?

A. No, I do not recall that.

Q. Regarding the final sentence of this speech which has already been quoted twice here, I have one question. You said that this sentence was generally discussed; it was not taken seriously. Is it true that Goering's bombastic manner of speaking was ridiculed and especially his favorite method of speaking of economic conditions with military figures of speech?

MR. SPEECHER: Objection. It is improper redirect.

THE PRESIDENT: It is leading and suggestive; Counsel, should leave the witness free to draw his own conclusions rather than to suggest what the answer should be. Objection sustained.

MR. SPEECHER: Mr. President, I had a further point. Maybe I can save time. On cross I merely wanted the question of its publication because we were anxious to find out where it was published. I didn't go into it any further on that point on cross examination and therefore I think the topic is beyond the scope of redirect.

THE PRESIDENT: Very well.

Q. Do you recall any statements of Goering in a similar way?

A. No, but in all his speeches he was more than plastic and bombastic.

Q. My final question. Did Dr. von Schnitzler in any way give you and other associates directives for the way in which the negotiations with the French were to be conducted?

A. I do not recall any positive directives. I do know, however, that Dr. Von Schnitzler said repeatedly and emphasized, speaking of the French gentlemen, "After all, we have to collaborate with these people after the war, too."

Q. Now, in conclusion, I want something which I think was a mistake in translation to be corrected. Did I understand you correctly -- I believe you have been questioned by Dr. Silcher -- Did I understand you correctly to say that according to the stock market value of the stock, did you answer four to five hundred percent?

A. Yes, that is correct.

Q. And, according to this method of calculation, this was the domestic rate in contrast to the stock market rate?

A. I was speaking only of the insured value.

Q. What I am interested in is that you did not say 45 percent. I am speaking of the point that that was what the translation was.

A. No, I said four to five hundred percent.

DR. SIEGERS: No further questions.

INDIRECT EXAMINATION

DR. TUEPPER

BY DR. SILCHER:

Q. Dr. Tuepper, in cross-examination Document MI-8450 was put to you. I unfortunately did not get the exhibit number, 1856. Exhibit 1856, Dr. President. That is a letter of the Legal Department of Berlin No. 7 of the 25th of February 1942 to the other Legal Departments of Berlin and to Dr. von Emler regarding the facts of war on contracts. Does this letter give the own opinion of the Legal Department No. 7 and Berlin?

A. No.

Q. You said that you had not seen this letter itself but you know of this decree of the Reichs Office for Foreign Trade. Did I understand

you correctly?

A. Yes.

Q. What was the reaction of Farben to this decree of the Reich Office for Foreign Trade?

A. The opinion was that we could not act according to this decree. A very important legal book appeared during the war, published by the Kaiser Wilhelm Institute for Foreign and International Private Law, with the title "Effects of the War on Contracts" ("Die Einwirkung des Krieges auf Verträge.") This book, which is a model from the scientific point of view, comes to a different conclusion. It says, for example, that if the basis of a business was changed, which is also part of the German "Ordre Public," contracts with the enemy are to be considered invalid. We expressed this same point of view in other opinions. I recall one opinion on the connection of Farben to the Unilever Konzern. The President of the Kaiser Wilhelm Society, Professor Heßmann, wrote this opinion, and it also concludes that contractual connections, in this case with England, are voided on the same legal basis as in the cartel agreements. That is the Dutch law which is decisive for the contract.

Q. Was the Kaiser Wilhelm Institute a high authority in this field?

A. I believe I can say that it was highly recognized as an international authority. It is still working today in Tübingen.

Q. Did the statement of the Kaiser Wilhelm Institute indicate that a similarly opportunistic attitude as the Reich Office for Foreign Trade?

A. There was no question of opportunism. It was very strictly scientific and legal.

Q. Did Farben in any way follow the policy of this opportunistic decree of the Reich Office for Foreign Trade?

A. No. We considered these ideas remarkable, and I at least know of no case of any action taken according to these directives.

DR. SILCHER: No further questions.

THE PRESIDENT: Anything further with respect to this witness from either Defense or Prosecution?

Since nothing is requested, the Tribunal will excuse the witness.

(Witness was excused.)

THE PRESIDENT: Counsel for the Defense will announce the next witness.

DR. SIEBERS: As the next witness, I should like to call Mr. Schwab on the subject of Poland.

THE PRESIDENT: Bring in the witness.

DR. SIEBERS: Mr. President, I should like to remark that I should like my associate, Dr. von Keller, to examine the witness Schwab.

THE PRESIDENT: Very well.

HERMANN SCHWAB, a witness, took the stand and testified as follows:

THE PRESIDENT: The witness will remain standing for the purpose of being sworn, raise his right hand, please, say "I" and state his name.

WITNESS HERMANN SCHWAB: I, Hermann Schwab.

THE PRESIDENT: And now repeat after me the oath.

I swear by God, the Almighty and Omnipotent, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

THE PRESIDENT: The witness may be seated.

DIRECT EXAMINATION

BY DR. VON KELLER (Counsel for defendant von Schnitzler):

Q Witness, for the record, will you please state your date and place of birth?

A I was born on the 8th of June 1886 at Hamburg, Oberer Taunuskreis.

Q Please describe briefly your career within I.G. Farben.

A In November 1909 I was hired by the plant at Hoechst. In February 1910 I was transferred to the agency at Vienna for the purpose of organization and later I was to travel. I stayed in Vienna until the middle of 1912. In July 1913 I was sent to Turin for the purpose of reorganizing the agency there. In March 1914 I came back and went to Brussels where the representative was ill until July 14.

Q Perhaps you could go into a little less detail, witness.

A World War I, I was in French custody for four years and then I returned to Hoechst, in the Roman Department, with the merger with the Eastern business, and in 1929 I was specifically in charge of the Polish business. I was in Poland from 1939 to 1943 as trustee of the three Polish dyestuffs factories and from 1943 to 1945 I was in my old department in Frankfurt.

Q When did you receive authority to sign "Handlungsbevollmachtigt."

A In 1921; in 1922 Prokura; in 1929 I became "Titular Director."

Q Can you describe briefly what the expression, "Titular Director," means?

A That means prokurist legally but not a member of the board of directors.

Q Perhaps, instead of board of directors you might use the German expression.

A "Vorstand."

Q Can you give me a brief description of the Polish dyestuffs industry first regarding overall production?

A The total production averaged about 2 thousand tons with a value of about 10 million marks.

Q What was the relationship between reichmarks and Polish currency?

A Before the war one zloty was equivalent to 47½ pfennigs.

During the war the rate was set at 1 mark for 3 zlotys. That is, the zloty was equivalent to 50 pfennigs.

Q What were the largest Polish dyestuffs factories?

A The greatest one was Papjenicze.

Q And the other names?

A The second one was Boruta, considered from the point of view of the dyestuffs factories; the third one was Winnica and the fourth one, Wola. Then there were a few smaller ones.

Q What percentage of total Polish dyestuffs production was produced by these four large factories which you have just named?

A The four large factories had 95% of production.

Q Now, will you briefly tell me the amount of production and the form of organization of these four companies, beginning with Papjenicze?

A I cannot give you any production figures but merely turn over figures. In the case of Papjenicze I do not have any exact figures at the moment but it was probably 6½ to 7 million zlotys. Boruta in the years 1937 had 6.2 million zloty of pure dyestuffs turnover. Winnica in 1937, 4.1 million zloty; and Wola, 2.7 million zloty.

DR. von KELLER: Mr. President, I hope you don't object if the witness refers to notes when giving such figures as a number of figures will have to be mentioned during the examination which go beyond the scope of a normal memory.

THE PRESIDENT: That is entirely permissible.

Q Now, please tell me in what form these four companies were organized.

A Papjenicze was a stock company. Stock capital was 4 million zloty, 95% in the hands of the Company for Chemical Industry in Basle Ziba, called Ziba. The Aufsichtsrat consisted of Swiss exclusively, one bank director from Hoechst was vice-president. Papjenicze was the only branch of the German-Swiss dyestuffs industry in Poland which went

back to the Czarist period.

Boruta was also a stock company, capital 3.75 million zloty. The majority stock holder was the State Land Economical Bank in Warsaw with 80.38% of the stock. The rest was divided among many small accounts.

Winnica was a joint stock company in French and Swiss possession, legally and economically under French-German possession; capital 2 million, which with exception of 12 share, was in the hands of two big stockholders. That is the French dyestuffs factories and I.G.

Wola is a private enterprise; the proprietor, Dr. Mauricy Szpilfogel. The invested capital amounted to an average in the last few years of 1.7 million zloty.

Q Witness, I want to determine for the record whether these figures that you have given were all in zloty.

A Yes, all in zloty.

Q I shall now read three passages from the indictment. At first from No. 77, the last sentence in No. 77. It reads:

"Farben later absorbed the Polish chemical industry."

Now, I shall now read from No. 97 of the Prosecution:

"In Poland the three major chemical firms were" — and then by name Boruta, Wola and Winnica are mentioned.

And the third passage which I shall read is No. 100:

"Farben integrated the entire Polish chemical industry with its own operations."

To clarify this point, please describe to me briefly the proportion, the relationship between the Polish chemical industry and the Polish dyestuffs industry. What was the order of the various types of Polish chemical industries according to size?

A In my opinion, the first place, if one considers the number of employees and the value of production together, was the nitrogen industry, and the second place artificial silk, the third place the rubber industry, the fourth place the pharmaceutical industry and cosmetic

industry, the fifth place the soap industry and only in the sixth place came the dyestuff industry.

Q What was the share of the Polish dyestuffs industry in total Polish chemical industry from the point of view of value expressed in percentage approximately?

A About 3 1/2%, perhaps 4%.

DR. von FILLER: Mr. President, the subject of cartel arrangements has already been dealt with in this connection. I shall, therefore, ask the witness only the most essential questions on the subject.

Q. What contractual obligations, Mr. Schwab, existed between German dye stuffs industry and Polish dye stuff industry?

A. There were two sorts of connections. First of all, the French Tripartite cartel and the Tripartite cartel with the Polish firms. The Tripartite cartel was founded in 1927 between the French dye stuffs factories Farben, and the Swiss dye stuffs factories, having a duration of forty years. The agreement between the Tripartite cartel and the so-called Polish group, composed of Boruta and Wola, was begun in 1932 with a limited provisional agreement and, in 1934, this was changed to a nine year contract.

Q. Witness, you have just mentioned the Polish group and named Boruta and Wola. Did Papenhof and Wiercina not belong to the Polish group?

A. No. Papenhof was a subsidiary of a Swiss firm and belonged to the Tripartite cartel. Also Wiercina, as a subsidiary, so to speak, or at least, being founded by a French firm, belonged to the Tripartite cartel.

Q. You just spoke of the market regulation agreement of 1934 which was for nine years. How did this market regulation agreement operate? As you said, it affected Wola and Boruta.

A. Yes. Wola and Boruta and on the one hand, and the Tripartite firms on the other hand. In 1929, at which time there was a serious economic crisis in Poland, the Boruta administration had put out feelers to the French industry and to Farben, after the Tripartite cartel had taken measures which proved to be very effective for itself. The contacts at that time led to new results. In 1932, under the leadership of the National Bank of Industry, Bank Gospodarczy Kresowego in Polish, which was interested, as the majority stockholder of Boruta, in stopping the Boruta's constant losses. The bank approached Farben, through middlemen, and after very long negotiations in the Spring of 1942 the first contract was concluded in which the Polish group had quotas from 21 to 22 percent. In 1934, the quota was increased.

Q. Mr. Sprecher was just kind enough to call a mistake to my attention. I believe you meant to say 1932, not 1942.

A. Yes, 1932. Thank you.

The quota were set at 20 to 22 per cent in the provisional agreement. In the final agreement, they began at 29.5 per cent and increased in the course of years to 33 1/3 per cent.

Q. Now, I should like to ask you what was the provision for Beruta and Mola on the one hand and the Tripartite on the other hand?

A. The Polish quota at the outbreak of war was 30 or 31 per cent, and the rest fell upon the Tripartite cartel as a whole. That would be about 70 per cent.

JUDGE MORRIS: Goodwell, I have been trying to review in my memory the evidence regarding this Polish situation and refresh it somewhat by rereading the index in the various volumes, and I am completely at a loss to find out in my own mind where all of this testimony regarding Polish cartels has anything to do with the case that has been presented by the prosecution, either in relating direct testimonies or as a matter of defense. I wish you would enlighten me a little bit about what you have in mind and where you are going with all of this detail regarding the Polish cartels.

DR. VON KELLER: Your Honors, I have attempted - and I am more or less finished to bring out through the testimony of the witness the connections between Farben and the Polish factories in order to show that Farben had basically friendly relations with Polish industry, especially with the Polish dye stuffs industry; that Farben had no inclination to subjugate the Polish dye stuffs industry, but assigned increasing quotas and thus gave her increasing income. I wanted to use part of these statements for my later argumentation, from the point of view that by virtue of these close connections there could be no question of intended spoliation. I will need part of these statements later in dealing with the subject of Winnica in which Farben had a financial interest by ownership of stock. But I believe that I have essentially completed this subject with the witness and can go over to another point.

JUDGE MORRIS: All right. I'll make no further comment then.

BY DR. VON KELLER:

Q. Witness, did you yourself participate in such cartel negotiati-

A. I participated in all Trigartite meetings where Polish questions were discussed and also all meetings with the Polish group.

Q. Witness, I should now like to show you three prosecution documents. They are NI 91151, Exhibit 1135; NI 9154, Exhibit 1136; and NI 6155, Exhibit 1137. They are in Document Book 55. The English pages are 50, 52 and 53. According to the copies which I have, these are photostats of typewritten documents which the prosecution submitted on the 23rd of October. The prosecution, in its trial brief, on page 102, asserts, and I should like to read two sentences:

"Halle von Rastdorf and von Seel deployed the German Legions on the Polish border, Pabon, in anticipation of the advantages to be derived from conquest, carefully reviewed the Polish chemical industry. On the 28th of July, 1939, under the title, 'The Most Important Chemical Industries in Poland', an extensive report was prepared under the charge of the defendant Ilgen which gave a detailed description of the physical structure of these concerns, their products and adaptability to German economy, and the names of their owners and directors."

What do you have to say to the three documents? Do you have the documents? Did you know about them?

MR. SPEECHER: Object.

THE PRESIDENT: Well, there's no harm in the question as to whether he has the documents and knows about them.

Objection is overruled.

MR. SPEECHER: I'm sorry, Mr. President....

THE PRESIDENT: That's purely preliminary.

MR. SPEECHER: I understood that the question was what do you have to say to these documents and that question followed upon the quotation of what the prosecution had to say in its trial brief. That is why I objected.

THE PRESIDENT: Well, the witness may ignore the statements of what the prosecution had to say about the documents in the brief, but he is entitled to testify as to what he knows about the documents that are in evidence. Is there any objection to that?

MR. SPEISCHER: Well, then I object further to the form of the question as to what he knows about the documents as being very broad....

THE PRESIDENT: Well, that is broad. I recognize that. I thought, in the interests of time, that he would get around to it.

I think we will better sustain the objection, Dr. von Keller, on the ground that your question is too broad. If you can direct the attention of the witness to what you want to know about the documents, that will be better.

BY MR. VON KELLER:

Mr. President, I shall make my question more precise.

Q. Did you earlier - that is, in 1939, know this report?

A. Not in this form. VOWI made many reports and, as far as they concerned my field of work, I received them all, but as it is shown here, in this case, etc., I did not see it. Perhaps I could be shown the original document.

Q. Unfortunately, we haven't anything but a photostat here, but in order not to waste time on the original—

A. I has just come to me probably that was a pamphlet of about 28 centimeters which came to me shortly before the outbreak of the war. I looked through it briefly and then I put it away. I had plenty of material in my department on these things. I had the handbook in four languages, - the handbook of Trade and Industry in Poland which was published frequently in Warsaw, and I also had the handbook of Chemical Industry in Poland, which contained such figures. I know that very well, because the Winnicki belonged to Farben.

THE PRESIDENT: Perhaps, Dr. von Keller, you had better ask another question and get the witness on the track of what you are concerned about.

Q. Witness, when you were shown this document for the first time did you connect it with preparations or plans for war?

A. No, certainly not. I considered that as merely an Industriousness on the part of "india".

Q. Did it bring anything that was news to you?

A. No.

Q. Are the contents of this document correct? Will you look at Exhibit 1136 carefully?

A. What page is that.

Q. You have the original there.

A. There are inaccuracies about the Verwaltungsrat. Dr. Von Schützler is there and Dr. Tor Heer, but at that time there were only Polish and French gentlemen on the Winnicki Aufsichtsrat or Verwaltungsrat.

Q. That is sufficient. Witness, you said before in 1939 until 1943 you were trustee for the Polish Dyestuff factories; please tell me who appointed you?

A. The Reich Ministry of Economics.

Q. Since you had formerly been an employee of Farben, can you tell me what reasons impelled the men of Farben when they supplied two employees for this task of the Reich Ministry of Economics?

A. The idea was the Economic life in Poland was to be supported,

and above all the Polish market must be supplied at Farben in collaboration with tri-partite, and the Polish corps had worked toward with great expenditure and great effort. This should not be lost. For this purpose it was necessary to prevent outsiders and speculators from getting these factories into their hands. That would very soon most likely have lead to waste.

Q. That is sufficient, Witness. I just wanted to ask you who were your superiors in the execution of your duties as trustees?

A. First of all the Reich Ministry of Economics, and then for a short time the head of the Civilian Administration in the Army High Command VIII, Lodz, and he was then from about the middle of November 1939 replaced by Hauptstaatsanwaltschaft Ost, Berlin, the main trustee office with the Branch Office in Lodz, and after the Government General was set up, the Department for Economy, the Office in Cracow.

Q. Did these authorities supervise your activities consequently?

A. In the sense they issued orders, regulations, and in addition to that there were very strict regulations about balance sheets, statements, and business reports and the books were studied. Supervision was very close.

Q. Did the regulations governing your activity contain any provisions for punishment?

A. Yes, as trustees we were, so to speak, civil servants, and the regulations for trustees provided in the case of negligence payment of damages, and in deliberate sentences by a special court, and in the case of insubordination the death sentence.

Q. Did you obtain your salary from the state or from Farben?

A. Schoener and I did not receive any money from the state or the concerns which we administered, neither money or other benefits. We were for this time on leave from Farben.

Q. Did Farben have any right to issue instructions to you and Schoener?

A. No, we were both bound to the orders of our superiors, the Trustee Office in Berlin, Lodz, Cracow.

Q. I ask you to look at Book 56 now, which will be handed to you in a minute; will you look at Exhibit 1157, NI 7371, page 22 in the English and page 54 in the German. On the third line there you will see "Administered by Farben as Trustee." Is this statement correct?

A. No. That is a letter of an employee in Leverkusen, who probably was not informed about the exact circumstances. He knew something about Farben as Trustee, but did not know the details. Instead of saying "two men of Farben, "Mr. Schoener and Mr. Schwab" he just wrote "Farben."

Q. That is sufficient, Witness.

DR. VON KELLER: Your Honor, I shall now deal with individual factors mentioned in the indictment, and I shall observe the same order observed by the Prosecution. I shall begin with Jola, then Veruta and finally Hindica.

Q. Witness, what did you do when on your assignment you first came to Boruta; when was that?

A. That was on the 3d of October 1939, in the afternoon.

Q. Please tell me where Boruta is?

A. Boruta is in the small town of Zgierz. I might say that it is a suburb of Lodz. Zgierz in later documents is also called by the German name Goernau.

Q. The German name for Lodz, in order to make it clear in the documents?

A. The German name for Lodz was Litmannstadt.

Q. In what part of Poland was Boruta, after the cessation of hostilities in Poland?

A. Boruta was in the Warthogau.

Q. Can you tell me the difference between the Warthogau and the rest of Poland?

A. The Warthogau was included in the Eastern territories included into the German Reich, which had formerly belonged to the Republic of Poland. That was in the north, the Warthogau, and in the South Bielitz. The area around Bielitz formerly Polish upper Silesia.

Q. In what condition did you find Boruta when you came there the first time?

A. The factory was undamaged. In the night from the 5th to the 6th of September 1939, by order of the Polish Government, the administration had left the factory, and all cash, about 400,000 Zloty of checks, drafts and the most important records were taken away, according to orders. During this night the workers and employees present were paid advances on their salary and the cashier had about 20,000 Zloty left from the funds at his disposal.

Q. What did Boruta produce?

A. Boruta produced primarily dyo-stuffs and a number of intermediates or preliminary products connected with dyo-stuffs. In this field of preliminary products it was the biggest producer in Poland. It also produced, in small quantities, accelerators for the rubber industry and there were expansion intentions by the establishment of a pharmaceutical industry. Buildings had been constructed and some machinery was present.

Q. Did they ever go into combat? Were there any other products?

A. Yes. There was an explosives plant at Boruta.

Q. What was produced there?

A. It belonged to the Polish War Ministry. It produced picric acid, dinitronaphthalene, and chlorpicrine.

Q. Can you give me the production quantities?

A. Picric acid, about fifteen tons per month; chlorpicrine small quantities; dinitronaphthalene, about ten tons — I estimate.

Q. Now, which of these three products is an explosive?

A. Picric acid and dinitronaphthalene. Chlorpicrine is tear gas.

Q. Were supplies of these explosives there?

A. Yes, there were about fifteen tons of picric acid at the factory and near the factory there were four loaded railroad cars. On the afternoon of 3 October a Polish chemist brought out attention to this explosives plant that had been in operation, and Schoener immediately had it out under water.

Q. That is sufficient. For what did you order as trustee of Boruta?

A. We first of all set up a status — we took inventory. We inspected. We cleared up the plant. We finished the production that had been started. We started work immediately. In the factory three days and in the office for a week. About 350 people employed and this number increased to 500 at times.

Q. Did the reopening of the plant proceed without difficulties or in what field did you have difficulties?

A. The greatest difficulty was the financial difficulty. I have already said that there was twenty thousand zloty cash. That was just enough

to pay wages for one week. I had to get some money. I went first to the chief of the civilian administration who was the authority there and he said trustees are there to help themselves. I did help myself. I mobilized my friends from my Farben activity, the big firms in Lodz. I said to them, "You have to pay because if no payments are made then economic life cannot operate." And I got money immediately from these big firms, and for my part I paid all minor debtors of Berata, whether they were Poles, Germans or Jews it made no difference. And after a few weeks I wrote to Dr. Horlo in Berlin.

Q. Who was Dr. Horlo?

A. Dr. Horlo was head of the Trusteeship Office in Berlin.

"Unless things are cleared up here we can't go on working."

Q. Now, were you able to manage with temporary financial aid that you got on the spot?

A. The cash matters functioned well. From the middle of October on the industry began to work more or less so that we had some new sales and we sold only for cash. Fabjenico, the main customer for intermediates, began to operate again and paid immediately.

Q. Did you try to get aid from any other sources?

A. Yes, from the trusteeship office. I approached them in November. I wanted to have two hundred thousand marks. I didn't know the figures so well then. Only after seven months did these men come to look at our books. In the meantime the situation became critical because when the plant started to operate the costs increased too. We had to get raw materials and we had to pay for them. Nobody would deliver on credit. I was in a rather difficult position. Dr. Deissmann came. That was a Farben employee,--a former employee that is to say, who was a soldier in the Wehrmacht and who had taken an interest in the I.G. agency in Warsaw already where he was stationed. He came to Lodz and I said to him, "Deissmann, you have to tell those gentlemen about my difficulties. Perhaps Farben can lend me something."

Q. Do you know what Mr. Deissmann did?

A. I do not know in detail. I heard that Farben, in a meeting on

20 October, had discussed the creation of a company to operate Beruta. This holding company was to act as trustee and operate Beruta and this would, of course, solve the financial question.

Q. Was this plan of the trusteeship company realized?

A. No, it was not. That was to be done in the form of a lease. But the negotiations went on for a long time without any tangible results.

Q. Now, what did you do in the meantime?

A. We muddled through.

Q. Did the Chief of the Civilian Administration help you?

A. No, he couldn't. He wasn't there any more.

Q. Did the trusteeship office help you?

A. I have already said that I thought it over for seven months before they started and the two hundred thousand marks I was to get long after I didn't need them any more.

Q. Did you see any possibility of getting bank credit?

A. No, bank credits were blocked because Beruta facilities had a mortgage of over six million marks. This mortgage went back to the German connection of Beruta.

Q. I don't believe we need go into that. But I should like to ask you where did you get help from?

A. Help came from Berlin. That was at the beginning of June. I had enough money on hand to pay wages for one day and I sent a telegram to Frankfurt -- "Help me." I have to tell you something else. I was in Frankfurt in May and I consulted with the gentlemen as to how help could be obtained before any agreement was reached with the trusteeship office. Then we figured the way out -- that was assignments to be issued and advances paid and when I was having the worst time financially those first advances came -- the first hundred thousand marks.

Q. Witness, you mentioned some specific dates. Can you tell me where you got these precise dates?

A. Yes. In the summer of 1945 for, I believe it was, the Special Finance

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Section in Frankfurt, I worked out reports on the three firms, Sorute, Holz, and Witten, on the basis of my records in Frankfurt and I have copies of it here. Also a few weeks ago I looked at my journal from the time of 26 September 1939 to 14 July 1941 where, in addition to private notations, I also recorded the more important business matters from day to day.

THE PRESIDENT: Doctor, I think this would be a good time for our recess. The Tribunal will rise.

THE MARSHAL: The Tribunal is again in session.

BY MR. VON KELLER:

Q Witness, you just now spoke about the financial difficulties which you had as a trustee of the Boruta. To illustrate that fact, please tell me what the relationship was between the turn-over and the expenditures of the Boruta?

A During the first months of 1940, the turn-over averaged approximately 135,000 Reichsmark, and the monthly expenditures amounted to 250,000 Reichsmark.

Q Then you said that you were helped at the last moment by work contracts (Lohnaufträge) from Farben. Can you tell me the extent of these work contracts, both in regard to production and in regard to the cash value?

A These were orders amounting to about 400 tons of intermediate products and vulcanization accelerators and approximately 500 tons of dyestuffs. Advances were paid in installments of 100- and 200,000 marks until the conclusion of the purchasing contracts, altogether 1.1 million Reichsmark.

Q Were these 1.1 million Reichsmark actually paid?

A Yes, they were actually paid through the Reichsbank.

Q Did Farben, in return for these advance payments and work contracts, have any rights or privileges in Boruta?

A No. Up to the conclusion of the purchasing contract, there was no guarantee given.

Q You said previously that the holding company (Auffanggesellschaft) was not founded. What was the course of the negotiations with regard to the lease, and how did these negotiations develop?

A In the project of the holding company a lease of the Boruta for the duration of the war had been provided. It was not actually leased because in Jan 1940 the administrator of Boruta appointed by the main trusteeship agency in Berlin informed Farben that instead of a lease a

purchase could be taken into consideration.

Q I want to bring out particularly who made the suggestion that the Foruta be acquired.

A The suggestion for the purchase emanated from the trusteeship agency by way of the administrator.

Q Do you know what thoughts and ideas motivated this suggestion?

A The existence of numerous plants administered by way of trusteeship was threatened by financial difficulties, and the trusteeship agency did not want to advance the funds for further operations on their own.

I remember that in the commentary about the law for the confiscation of Polish property, it was stated that in the case of a purely bureaucratic administration of the plants, the original capital, would be used up, and that for that reason the plants should be sold to serious prospective buyers.

Q Do you know what answer Farben gave to the suggestion of purchasing the Foruta?

A Farben stated that they were ready to buy, because if they concluded a lease agreement it would have been very difficult to transfer their "know-how" into the Foruta without getting satisfactory guarantees.

Q What practical offer did Farben make?

A In September 1940 Farben made a written suggestion for a lease.

Q Did you say "in September"?

A I meant to say a suggestion for purchase -- not for a lease.

Q What purchase price was mentioned in this connection?

A 3.2 million Reichsmark for real estate, equipment, and stock piles.

Q What was the further course of negotiations for purchase? When did the two parties agree?

A In my recollection, in December 1940 in Berlin, for the first time, The trustees, Schoener and myself, were present.

Q In the course of purchase negotiations, did any competitors appear?

A Yes, the Gutbrod brothers, who operated a paint factory of medium size near Frankfurt, who had excellent connections with the SS. The SS had taken a number of factories in the eastern territories under their own protection: cement factories, brick yards, a paper factory in Osnestochau, and in Landsberg a large textile factory; and they probably had the intention of constructing a chemical enterprise as well.

Q What was to be feared as a consequence if the Gutbrod brothers had acquired the Noruta?

A The Gutbrod brothers were no experts. One had to assume that they were in no position at all to operate this enterprise, and the result would have been that they would have run down the enterprise, that they would have wasted all the capital, that they might have sold all the stock-piles, and that as a result the plant would have finally been closed down.

Q How were the purchase negotiations carried out between the Main Trusteeship Agency East and Farben?

A There were various discussions. I remember that meetings shortly before Christmas in 1940 were broken off without results. Then in July, 1941, in Berlin, there was a long, detailed discussion in which oral agreement was reached. The formal purchase contract was not concluded until the end of 1941, probably in November, before a notary in Berlin.

Q How about the purchase price? You mentioned Farben's suggestion of 3.2 millions.

A The MTD (Main Trusteeship Agency East) did not accept this suggestion. Their demand was much higher; they demanded 5 million marks. Mr. von Schnitzler finally agreed to that demand.

A No. I personally am of the opinion that the Trusteeship Agency East wanted to keep as close as possible to the value which these plants and stock-piles were assessed at on 30 September, 1939 — and that was a little more than 10 million Zlotys, equal to 5 million marks.

Q What did Farben actually acquire by this purchase contract?

A They acquired the real estate, the equipment, and the stock-piles of Boruta.

Q When Farben took over Boruta, as far as you know, was this a final measure? Was this to be the last word in this affair?

A No, at that time one could not very well speak of final measures. I believe that, according to the course of events, the possibility was left open for achieving an understanding at a later time with the Polish proprietors.

Q As man particularly acquainted with conditions at that time in Poland, I ask you what would have become of the Boruta if Farben had not put any capital into this plant and if they had not taken care of this plant?

A It would have suffered the same fate as did all other plants in a similar situation. It would have become impoverished slowly and then it would have become paralyzed and it would have died away.

Q Would it have received allocations of coal and other materials from the authorities?

A Coal was comparatively easy to obtain in Boruta because it was near the coal center of Goerdnez. Coal was one of the bottle-necks. It was much more difficult in the case of benzene, toluene, and sulphuric acid, and in the further course of events, if I remember the situation correctly, was that these allocations were made at the expense of the Farben quota, at least partly.

Q How long did the Boruta keep operating after that?

A Until 19 January, 1945. In the evening the management left the plant, after the spearheads of the Russian armored force had surrounded the factory.

Q Did the management of the plant or the German Wehrmacht damage any of the Boruta installations before they left them?

A Boruta was left completely undamaged and in a better condition than when we took over.

Q Did Farben profit from operating Boruta?

A No. Farben's total loss for Boruta, from the first of October, 1939, until the 30th of September, 1944, amounted to 1,238,497 marks.

Q Mr. Witness, I now turn to another plant, the second dyostuffs plant mentioned in the indictment; that is Wola.

THE PRESIDENT: Dr. von Keller, I am wondering, in view of the detail that the witness has gone into thus far, that with respect to these other two plants you could not place the emphasis on the more important issues without going into all of the intricate matters, as you have in the past?

DR. VON KELLER: I shall try, Mr. President, to be as brief as possible in my questions. But I believe that, particularly in the case of Wola, many details are mentioned in the Prosecution's documents. Of course, I would....

THE PRESIDENT: Do the best you can along that line.

BY DR. VON KELLER:

Q Mr. Witness, when did you visit Wola for the first time?

A On 20 October, 1939.

Q Where is Wola situated?

A About 13 kilometers southwest of Petrikau.

Q In what condition did you find Wola?

A Wola had been closed down since the beginning of the war. Heavy fighting had taken place around Petrikau. Wola had been damaged by artillery shelling, and it had burned in part.

Q Was the plant in a condition that it might have operated?

A No, as we found it that was hardly possible.

Q Did it still have any transportation?

A No transportation of any kind was available.

Q Witness, I shall now show to you Document Exhibit von Schnitzler No. 1, which was presented here on 23 October.

This is a picture. Please look at this picture and tell me what it represents.

A This photo was taken by me on 20 October, 1939, with a 6 x 9 camera, and I enlarged it myself. It represents the sulphur black plant of Wola, which had been damaged by artillery shelling.

Q Does it represent a shed, or does it represent the sulphur black plant?

A The entire older part of Wola consisted of light brick buildings with wooden roofs. They might be called sheds.

Q I now ask that I be permitted to hand three further photographs to the witness which are designated with the letters A, C and D. I ask that I be permitted to offer these as von Schmidtler No. 7 for identification. Unfortunately I have only one copy.

THE PRESIDENT: Do you wish to give these numbers -- exhibit numbers --- now and to offer these?

DR. VON KELLER: For identification, No. 7, is President.

THE PRESIDENT: Very well. It is so ordered.

DR. VON KELLER: These are three photographs.

WITNESS: Letter "A" is the factory road looking toward the entrance of the plant, as I wrote on the bottom of the picture. It gives the general impression of the construction type of the Wola plant. Letter "C" is also a part of the street running through Wola with a few better stone buildings. The stone building at the left is the plant for basic dyestuffs. Letter "D" is the old sulphur black plant near the factory entrance, and in the background there is the boiler house and the chimney.

Q Is any damage to be seen on the pictures, and, if so, what caused this damage?

A In photograph "D", at the left and at the right in the foreground, one can see walls that have collapsed because of artillery shelling. Photograph "A" does not show any visible damage. And letter "C" shows only the mess in the factory that was caused by the war.

Q What action did you cause to be taken as trustee of this
Wala plant?

A Simpson caused the reactivation of dyewuffs production as
far as possible, and then the repair of the sulphur black plant so that
the roof was repaired and the windows closed up.

Q That is enough. How about the commercial aspect?

A We could not do very much because the offices, we were told,
had been plundered by the people. All receptacles had been broken into,
and the safe also had been opened. The records were lying around on the
floor, knee high. The chief records had been taken away by Dr.
Septifogal to Warsaw.

Q Did you find any cash?

A Not a penny.

Q What questions confronted you as trustee in regard to possible rebuilding and operation of the plant?

A One could hardly think of resuming production in Wola. Wola is very unfavorably situated — way out in the country, 13 Km. from the railroad. There are no transportation facilities; a taxi drive from Wola to Patriksu and back at that time already cost 100 Zlotys. The transport of raw materials and the removal of the finished products would have made any profit impossible; moreover, Dr. Sapilfogel himself had been both the technical and commercial head of the plant, aided by a few younger gentlemen of his family of whom nobody was present any more — only one old man, a chemist more than 70 years old.

Q That is enough. How about the financial situation?

A We had no money at all. After the bookkeeper had told me that the main banking had been the General Credit Bank (Allgemeine Kreditbank) in Warsaw, I went to the director of the bank, whom I knew personally, and from him I heard that he would not be able to grant any credit to the Wola because Wola was already too much in debt to his bank.

Q Shortly after your first inspection of Wola, did you, at any time, draw up a report on the financial situation of Wola?

A We were not able to do so. We could begin to work only after we had had the first talk with Dr. Sapilfogel and had received the index of his customers and packages with the most important documents, among which were all insurance policies, etc. There were also the personal insurance policies of Dr. Sapilfogel, which, of course, I returned to him.

Q What was the relationship between the credits outstanding and the active accounts?

A In the bank Wola had credit of 126,000 Zlotys and a debt of 127,000 Zloty. Added to that one had to take into account retroactive

claims from the bank, from drafts which had been discontinued, in the amount of 255,000 Zloty. According to regulations of the trustee-ship agency, claims had to be investigated according to three aspects. The trustees, to their best knowledge and belief, had to estimate on their own what could be considered as credits outstanding of all value and what percentage of accounts were of a doubtful nature; and all claims which were in the Russian territory--the Russians had marched into East Prussia on the evening of the 17th of September 1939--had to be evaluated as zero.

Q What was the result of this check on the claims?

A Credits outstanding amounted to approximately 315,000 Zloty, and claims of suppliers, which we also had to divide into the same three categories amounted to approximately 234,000 Zloty.

Q Apart from those technical and financial difficulties, I also ask you to describe to me the difficulties from the sales angle.

A The business of Wola rested, for the most part, in the two large textile centers of Lodz and Bialystok. Bialystok was in the hands of the Russians and it was eliminated for that reason. Lodz was in the Warthegau, and in the Warthegau, according to regulations, the German prices had to determine the sales prices.

Q Was there any customs boundary between the Government General and the Warthegau?

A Yes, there was a customs boundary, but not in the sense of export from the Government General to Germany -- there were never any tariffs on dye-stuffs in Germany -- but the other way around, -- to the Government General from the Reich, for this import into the Government General the very high autonomous Polish tariffs were to effect.

Q How high were the German price fixations in Lodz?

A They were about 20 to 40% below the prices applicable in Poland.

Q What markets did Wola still have?

A They had only the Government General, in which there was not very much textile industry. The leather industry in Lemberg also was in Russian hands.

Q What conclusion did you and Herr Schoener, the two trustees, draw from these various factors?

A We were forced, for all these reasons, to let the Wola remain inactive, since it was already paralyzed, and the Landrat of Petrikau, who accompanied us on this first visit, agreed to this resolution.

Q Mr. Witness, I now submit to you a document of the Prosecution. It is in Document Book IV, KI-2749, Exhibit No. 1139, page 56 of the English, page 87 of the German. On page 4 of the German it says, at the beginning of a paragraph: "The chemical plant Wola Kraysstoporska, which built up almost exclusively upon intermediate products of the Boruta, and which did not have any large significance as an independent production plant, will have to be closed down." From the first page of this document you can see that it was written on 14th September 1939--that is, a period of time which antedates the reflections that you have just related to me.

Can you tell me why and for what reasons the closing down of Wola was already discussed on 14 September 1939?

A Yes. That was a consideration of a technical and economical nature. From their long years of experience with the Polish dye-stuffs business very well. Under war-like conditions one had to expect a decrease in the business, and the question was "Should we expose all four plants to the dangers of these decreases, the extent of which we could not yet foresee, and permit these four plants to run the danger of floundering, or should we close down the worst one of the four in order to strengthen the other three?" The worst plant for technical and economical considerations--and here again I point out the unfortunate situation as far as transportation was concerned--was Wola.

Q I now ask you, did later developments, independent of the results of the war, justify this consideration?

A Later developments definitely justified these reflections, because in the course of developments we not only had to close down Wola and keep it closed, we also had to close down Winnica at a later time.

Q I now ask you to look three paragraphs above, in the same document, or the passage which states, "The chemical plant Wola Krzysztoporska is a non-Aryan family enterprise." That is in Book LV, the third page of the document, on page 57 of the English; the second paragraph from the top. Did that fact have anything to do with the suggested closing down of this particular plant, Wola?

Have you found that passage, witness?

A What sentence are you speaking about?

Q I am speaking about the sentence that reads: "The chemical plant Wola Krzysztoporska is a non-Aryan family enterprise."

A. That has no causal connection with the closing down of the plant. You have to look at all the reasons given in the middle of Page 2, Winton, no, no, — yes, Winton. All of this is an explanation of the causal relations of the plants, the legal structure, and the conditions of ownership.

Q. But this document mentions the fact especially that this plant is a non-Aryan family enterprise. How do you explain this particular stress?

A. That was part of the ownership conditions. It was a condition which we had to state, we could not evade that, because since 1933 a differentiation was made between so-called Aryan and non-Aryan enterprises. If we had left that out, then we would certainly have had to expect further questions of the Ministry, especially since this was a private enterprise.

Q. Did the fact that this was a non-Aryan family enterprise have anything to do with the closing down of the plant?

A. No, it would have been closed down just as well if it had been an Aryan enterprise.

Q. At the beginning of your examination this afternoon you said that the owner of Jola was Herr Szpilfogel. Since when had you known Herr Szpilfogel?

A. I knew him by sight from 1929 on. Personally I made his acquaintance when we concluded the contract in 1932.

Q. After the war, on what occasion did you meet him?

A. A week after our visit to Jola I visited Herr Szpilfogel in Warsaw, together with Dr. Schooner.

Q. What was your personal relationship with Dr. Szpilfogel?

A. I always entertained good relations with Dr. Szpilfogel.

Q. What was the particular cause for your visit to Dr. Szpilfogel in Warsaw?

A. First of all, I wanted to make sure whether he had taken any

documents with him, as had been reported to me in Wola, and I wanted to learn from him whether I might retrieve those documents, which was actually done, because on the next day he had them delivered to me.

Q. When did you see Herr Szpilfogel again?

A. I can look it up. In the 2nd of December I saw him again personally, but he corresponded in between.

Q. What was discussed at this second visit?

A. At this second visit we discussed only questions of assistance. Dr. Szpilfogel had already asked us - Dr. Schneider and myself - for assistance, during our first visit. For us, the Trusteeship Agency in Grodno was competent, but we had not been received in a very friendly manner there. For that reason we went to the Trusteeship Agency in Warsaw, which was not competent, where a very kind gentleman from Vienna was in charge. He permitted us to pay Dr. Szpilfogel 500 Zloty a month, but only orally.

Q. Did you try to get more for Dr. Szpilfogel?

A. 500 Zloty was considered the maximum by the Trusteeship Agency. If more was necessary, a special request had to be made.

Q. Mr. President, in this part of the examination, I must go into a number of details, and therefore I must refer to Exhibit 1159, this is NI-10416. It is in Document Book 56, on page 19 of the English; it was put in afterward. In the German it is on page 51. Oh, I beg your pardon. I was mistaken. It is on page 25a and following of the English, and in German on pages 60a and following.

Moreover, I also want to refer to Exhibit 1155, NI 707; also in Document Book 56, page 19 of the English, page 51 of the German.

Dr. Szpilfogel said that he had to request assistance for three Cadillac, because of his Wola ownership. What can you say in that connection?

A. This is the state of affairs. Szpilfogel himself was the sole owner of Wola. Unfortunately he had invested his other property

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in houses in Warsaw and Lodz, and he had had them carried on the books of his business, as well as purely private affairs, such as barber bills. In these books current account claims were listed, I believe 30,000 Zloty from Mrs Wyzanski, his daughter, and 10,000 Zloty from his sick son.

Q. Were these two people partners, or were they current account creditors?

A. According to the books they were purely current accounts; only the name, the date, and the amount were listed on the index files.

Q. According to the legal regulations, was it possible for you to pay assistance to current account creditors, or were you permitted only to pay money to the proprietor?

A. Only the proprietor could get any financial assistance.

Q. What was the further course of these financial assistance affairs?

A. This subject of three families was raised; on the 3rd of December I saw especially from Szpilfogel who was tearfully explaining to me their difficulties. I discussed this matter in detail with Mr. Szpilfogel and explained to him why our hands were tied.

I recommended that he make an application in writing for an increase of the minimum. He did not want to do that, for reasons unknown to me, and he did not do it.

This day in December, Schooner and myself were very much affected, and all the way back we discussed the problem of how we could help the Szpilfogel family. We saw no other way out than to go once more to Guggenborg -- this gentleman from Vienna in the Trusteeship Agency in Warsaw. Our affairs were a little irregular. In May 1940 he told us, "Be careful. I warn you. Don't do anything which you are not entitled to do."

Q. What regulations determined that more than 500 zloty, as you said, could be paid only on special application?

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That was a general regulation and I must tell you that Dr. Japilopel was sent to the Warsaw ghetto in September, 1940.

In December 1940, the general regulation was issued which decreased this assistance from 500 to 250 Zloty, with the addition that petitions for increase will be considered of the children of the Jews.

Q When was Herr Szpilfegol sent to the ghetto?

A November, 1940.

Q Would you now please look at the correspondence on page 51 of the German, and on page 19 of the English document book? That is book 56. What date does Dr. Szpilfegol's letter bear?

A 16 January, 1941.

Q What is the date of the answer of Dr. von Schnitzler?

A The 24th.

JUDGE HESSENT: These documents are in evidence, and they have the dates plainly on them. I do not see the need of taking the time of the Tribunal to read off dates from documents which are already in evidence and which we have before us and which we have just scanned in the first part of this testimony.

DR. VON KELLER: I wanted to ask the witness what conclusions he drew from the prompt answer to this letter. Altogether, only a week passed between the time the letter was sent from Warsaw and the answer of Herr von Schnitzler.

JUDGE MORRIS: It may be that the witness has drawn certain conclusions, won't the Tribunal be the people to draw the conclusions, rather than the witness? I do not think the conclusions are of any value at all to us, Counsel. You have a statement of facts here that is to be passed upon by the Tribunal, and if there are any conclusions to be drawn from the prompt reply, why the Tribunal will draw those conclusions. That is one of the things that we are here for. We do not need the aid of a witness to draw that kind of a conclusion.

DR. VON KELLER: Certainly I did not want to anticipate any of the functions of the Tribunal.

Q What impression did you have, and what did you think you should do, when you received Dr. von Schnitzler's letter?

A I had known Dr. von Schnitzler for many years. I know that he had to phrase his letter carefully. The letter might fall into the hands

of censorship and might be turned over to the Gestapo by them, and I understood perfectly that he wanted to help Herr Seidlfoegal, who had been known to him personally since 1934 from old negotiations with the Polish group. After all, he could not prescribe any action. For that reason he said, "See what you can do." For me, that was just as good as if he had said, "Do what you can." That can be seen from my very prompt and detailed reply to this letter, in which I explained the situation to Herr von Schnitzler, and I acted immediately.

Q You just said that you know Herr von Schnitzler well. How long?

A I have known Dr. von Schnitzler since the middle of 1912, from the time he entered the dyestuffs plant in Hoechst, and I had the honor at the time that Herr von Schnitzler asked me about the relationship between the old factory in Hoechst and the agency.

Q Can you give me a short professional description of Herr von Schnitzler, very roughly?

A I consider Herr von Schnitzler an excellent man, a man of caliber, not only in the German economy, but more than that, in the European economy. He was kind and ready to advise personally. Privately and also in business affairs, nobody left his office who received a stone instead of bread. He was a beneficent and magnanimous superior.

From the time of our close cooperation, especially close since 1934, he permitted me freedom of action to a very high degree. I never heard a harsh word from him. He was generally esteemed and very popular, and may I say here that at the end of June, 1939, I participated in a Tri-partite and subsequent Quad-partite Cartel meeting in Paris, where in the evening, on the occasion of the 10th Anniversary of the Tri-partite Cartel, the French held a banquet. Speeches were made at this banquet, at which the British gentlemen, and especially Director General Josef Frossard and Dr. Recklin, as spokesman for the S.A.s factories, participated, those were no celebration speeches. There were avowals coming from

the heart for Mr. von Schnitzler and for his life's work, European dyestuffs cartel.

Q Thank you very much, Mr. Witness, for your statements. Can you explain to me briefly what you know about Mr. von Schnitzler's attitude on the Jewish question?

A Herr von Schnitzler was no anti-Semite. I remember that he was always for an understanding with the French firms, and that he worked closely with the two Mrs. Weinberg.

I never heard an anti-Semitic statement from him.

Q Can you say something quite briefly about Herr von Schnitzler's attitude on National Socialism?

A He was not a National Socialist. In his position he had to join the party, but in intimate circles he always criticized it sharply. I remember in 1934, when we were together with the Swiss and French gentlemen in the Schuetzenhaus in Basel, in a corner, Herr von Schnitzler expressed himself quite loudly about the Nazis; the people sitting around us began to stare at us, so that I thought it necessary to point that out to him, because I was facing toward the room.

Q That is sufficient. I should now like to come back to the Sapilfogal affair. What did you do after you received Mr. von Schnitzler's letter?

A I first of all replied promptly to Mr. von Schnitzler; then I went to the Trusteeship Agency, and I heard, as is customary with authorities, "You have to stick to official channels. You have to make an application to the Kreishauptmann; you have to get a certificate of the Elderman of the Jews."

I wrote that to Dr. Sapilfogal, again very promptly, on the 11th of February, 1941.

Q Did you receive any reply?

A No, I did not, and on the 25th of March -- in the meantime I had been in Frankfurt for about a fortnight -- I asked once more that he

write to me.

Q Did you receive any reply?

A No, I did not.

Q Witness, I ask you quite explicitly, because you mentioned those two dates, are those dates recorded in your original diary from 1941 and 42?

A Yes, yes.

Q Did you have any other possibility of getting in touch with Herr Sapilfogel?

A I did not have such a possibility. The initiative had to come from Herr Sapilfogel, through a personal messenger, some word that only he and I knew that I would have been able to pay him something from Farben funds through such a messenger.

I would not dare to do so on my own without risking my life, for either I would have been deceived by a crook, who would have taken the money himself, or a spy, and that would have been fatal for me and for Mr. Sapilfogel.

Q Please describe briefly how the Ghetto was blocked off from the outside world.

A It was separated in such a way that there were no houses they were evacuated; streets into the Ghetto were blocked off by a wall, about four or five meters high, with glass and barbed wire on the top. The guards were very strict, latrines under the supervision of the SS were the guards, and they were trigger-happy.

Q Did you ever have any experience with the guards of the Ghetto?

A At the beginning of 1942, in the evening, I went with an auditor through the Saxony Garden, the park behind the big castle in Warsaw. We approached the Ghetto. When we got within sight of the Ghetto, at the turn of the street, we heard shots, so that we picked up our heels and started to go back.

Q Was there any censorship between the outside world and the Ghetto?

A Yes.

Q The last question in this regard: Could you initiate any investigation as to the circumstances of Mr. Spilfogel?

A That was impossible for me.

DR. VON KELLER: Mr. President, is this a convenient time to make the recess?

THE PRESIDENT: I think it is.

Just before we do recess, perhaps Judge Hobert might wish to say something with regard to the program tomorrow, if you have finished, Doctor von Keller.

JUDGE HEBERT: Dr. von Keller, do you have any estimate as to how much longer you will require?

DR. VON KELLER: I believe that the morning session will be taken up with the witness Schaub, since a few more points are left on the Wola complex, and then the Wladimir plant has to be treated also.

JUDGE HEBERT: Well, in any event, we understand that Dr. Melte will be prepared to proceed immediately thereafter.

Is that correct, Dr. Melte?

DR. MELTE: Yes, Your Honor.

THE PRESIDENT: The Tribunal will now rise until 9.30 tomorrow morning.

(A recess was taken until 0930 hours, 30 January 1948).

Official transcript of the American Military
Tribunal 6 in the matter of the United States
of America, against Carl Krauch, et al,
defendants, sitting at Nurnberg, Germany, on
30 January 1948, 0930, Justice Shake presiding.

Military Tribunal VI is now in session.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI. God
save the United States of America and this Honorable Tribunal. There will
be order in the Court.

THE PRESIDENT: You may report, Mr. Marshal.

THE MARSHAL: May it please Your Honors, the defendants Krauch,
Haeffliger, Schmitz, Schneider and Ilgner are absent from the court room,

THE PRESIDENT: The defendants named by the Marshal have been ex-
cused from attendance today by the Tribunal.

Are there any announcements from the defense?

DR. BOETTCHER: Mr. President, in regard to the cross examination
of those affiants still outstanding, I should like to report to you on the
basis of our conference that took place yesterday.

In the name of all defense counsel, we waive cross examination of the
affiant Hrugowsky. Unfortunately, that is the only one whose cross exam-
ination can be waived.

THE PRESIDENT: Thank you, Dr. Boettcher.

Now, without taking into account the two witnesses in Vienna who are
to be cross examined under the supervision of the Commissioner, that leaves,
as we understand it, eight witnesses outstanding, and, in that connection,
the Tribunal would like to have a conference with some spokesman for the
prosecution to resurvey the possibility of producing these witnesses, or,
at least, a part of them, in person. No emergency about that and just at
your convenience, Mr. Sprecher, we would like to talk to you about it.
Are there any other announcements? Anything from the prosecution?

MR. SPEECHER: No, Mr. President.

THE PRESIDENT: Then the defense may continue with the examination
of the witness in the box.

DIRECT EXAMINATION - Continued

HERMANN SCHWAB - Resumed.

BY MR. VON KELLER:

Your Honors, during yesterday's examination of the witness Schwab I had left off with the Document III 10416, Exhibit 1159, in Book 56, page 25A of the English and page 60A of the German. There are a few points mentioned in this document that I still have to deal with.

Q. Witness, the affiant, Mr. Szpilfogel, states in this affidavit that Farben confiscated intermediates and dye stuffs and sold them. What is the story on that?

A. It wasn't Farben who confiscated and sold these intermediates and dye stuffs, but the trustees did that. Dye stuffs and intermediates were not sold on the account of Farben, but on the accounts of Wola. It was always cash sale and the profit was put to the credit of the trustee administration of Wola.

Q. To whom were these dye stuffs sold?

A. Chiefly to the former customers of Wola and mainly by the representative of Wola in Lodz who was a friend of mine for many years and who worked very well together with the trustees in the interests of Wola.

Q. Were the accounts checked by Farben, about these monies, or Wola?

A. No. Farben has nothing to do with this at all. The monies were used to pay salaries and larger amounts, especially back taxes, etc. The rest remained in the bank.

Q. In Mr. Szpilfogel's affidavit it is stated further that the "commissioners" had confiscated his automobiles. Can you tell me what the story is on that?

A. This is not true. The automobiles were used by the Polish military on their retreat. His personal automobile, his large car, Mr. Szpilfogel took with him to Warsaw where the German military confiscated it.

Q. How about Mr. Szpilfogel's estate in Otwock and Mr. Szpilfogel's house in Warsaw?

A. Both houses had been inactivated in the account of Wila. The construction costs had been booked on the books of the firm. Therefore, we had to calculate them in as belonging to the operating capital of Wola.

The estate in Otwock was not really an estate, but a large piece of real estate on which a private building was to be constructed which had only been completed on the outside. The house in Jarsaw was livable, but not quite finished yet, but it was occupied up to the roof.

Q. Did you, in your capacity as trustee, utilize this real estate in Jarsaw and Otwock for Farben?

A. No. We administered this only for a few months. Then these real estates, houses, were administered by a special trustee who checked the loss or profit from these real estates and houses with us.

Q. One further point: In Mr. Sapilfogel's affidavit he states on page 4 of the German copy at the beginning of a paragraph. "According to your point of view that everything had been confiscated for Farben. The gentleman, Schwab and Schooner, demanded that for the little residence in which I lived in Warsaw with my family I was supposed to pay a monthly rent of, I believe, 150 zlotys to the Secretariate of the Farben representative, Fyldo."

Can you tell me what the story is on that?

A. The state of affairs is this. We had been given oral permission by the trusteeship agency in Warsaw to grant Mr. Sapilfogel 500 zlotys a month as financial support. The rent for the house was the same as had been fixed previously for this resident by Mr. Sapilfogel for another lessee. If the trustees would have permitted Mr. Sapilfogel to live without paying rent, then they would have had to subtract the amount of the rent from the monthly support that he received. For, otherwise, that financial support would not have amounted to 500, but to 650 zlotys.

Q. How about payment to the representative of Farben, Fyldo?

A. For my assistant I had engaged a young Polish lady, a Miss Wolulet, in order to protect her from having to report for labor and

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evacuation to Germany. Miss Walulst took care of this house administration during the first few months, and her office was in the building of the Farben agency in Warsaw. There was no other possibility for me to move into any other office in destroyed Warsaw. The money, of course, was also put into the bank for the account of Wola.

Q. That is, to the account of the trusted administration Wola?

A. Yes, quite correct. To the account of the trusted administration Wola.

Q. Witness, Mr. Szpilfogel, the affiant, states at another passage in the affidavit: "Schwab fixed thus these rules and interpreted these rules always in the most unfavorable sense to us and...." Excuse me. At another passage, Mr. Szpilfogel says: "As I emphasized, Schwab was always especially rigorous."

I believe it is important for me to ask you what was your attitude toward the entire question Szpilfogel?

A. To this I should like to state the following. I met Mr. Szpilfogel during the first agreement made with the Polish group in 1932. During those first two years in which the contract was in effect....

THE PRESIDENT: (Interrupting) Mr. Witness, I think you detailed on yesterday your acquaintance and the beginning of your association with Mr. Szpilfogel. It will not be necessary to repeat that. If you get directly to answer the question, in this connection, what was your attitude and relationship to him, I think it would suffice without reviewing the history of your acquaintance with him.

THE WITNESS: Not only did I regard Mr. Szpilfogel as the senior man in Polish dye stuffs industry, not only did I respect him in this position, but I also esteemed him as a human being. In February of 1939 I was a guest in the house of Szpilfogel in Wola and I saw Mr. Szpilfogel in his family and I made his acquaintance as a lovable family father.

BY DR. VON KELLER:

Q. Witness, please be a little more brief.

A. We spent many hours together and I found Mr. Szpilfogel to be a man of high culture and great knowledge. To me, as a business man and administrator, the unpleasant task was delegated to enforce such regulations. I approached Mr. Szpilfogel with much feeling of shame.

It would be impossible to see the distress of a mother who looks for her child without having a heart. We did what we could, but our hands were tied as trustees. We had our regulations and there were serious penalties imposed for non-compliance. In retrospect today you have to take account of our situation. There were spies and people who provoked us. We were members of Farben. Party circles, either openly or hidden, hated Farben. It would have meant a devilish pleasure for them to have two Farben directors stumble over a thread and even those people who they would have liked personally they would have put in jail and would have executed. I often considered myself a trapeze artist over an abyss. Only any one who has been in a similar situation as we were, under this pressure, and remained without any blemish can throw a stone at us.

Q. Mr. Witness, did you see any possibility to do any more than what you did and help Mr. Szipilfogal?

A. I repeat, we had our regulations. We went to the man who was most approachable once over, but he only stuck to his regulations.

Q. Thank you very much. That is enough.

I now turn to another count in the Indictment, that is, the Betnosynaptol acid plant which was situated in Wola. Document 1163, NI 8397, in Book 56. Refer to this. It's on page 15 of the English, and the following document also. Exhibit 1154, NI 8778, on page 17 of the English. The German pages are 47 and 49. When did you find this plant and what is the story on this? May I mention that this plant is also mentioned in Mr. Szipilfogal's affidavit.

A. We found this plant during our first visit in Wola on the 20th of October 1939.

Q. Do you know how Farben learned about this plant?

A. I don't know any details.

Q. As far as you know, why did Farben suggest the evacuation of this machinery to Germany?

A. There was a pressure boiler among this machinery of small

dimensions which could be well used for experimental purposes according to Schoener's point of view, and Farben suggested to the Reich Ministry of Economics to transfer this machine to Berlin for the duration of the war and suggested that they would pay lease for it.

Q. Was a lease contract concluded?

A. No, the negotiations were not conducted by the trustees, but by Farben in Frankfurt directly, first in Berlin and later with Cracow.

Q. What replaced such a lease contract?

A. Upon the suggestion of Cracow it was replaced by a purchase contract.

Q. What was the price?

A. 44,000 zloty which is equal to 22,000 marks. I must explain that we did not evacuate the entire machinery, but only this one high pressure boiler with the electric air pump and a high pressure steel coil which belonged to this boiler.

Q. Can you explain to the Tribunal quite briefly what this machinery looked like so that we can imagine what it was used for as laymen?

A. Do you want to know how the high pressure boiler looked?

Q. Its dimensions approximately?

MR. SPECKER: Objection as irrelevant.

THE PRESIDENT: Well, it is certainly a very minor detail which would not have any persuasive influence with the Tribunal, I am quite sure. I think it might well be omitted, counsel.

BY DR. VON KELLER:

Q. Had this plant already been operating?

A. Once, shortly before the war, as an experiment. The pump had broken down and the pump piston was sent back to the manufacture in Cracow to be repaired and was not returned.

Q. Then was it dismantled?

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... Dismantled by a mechanic from Offenbach 1941 and packed and
stenciled properly to Parbon, because it had been paid for. Evacuated,
because of weight of boiler, only in 1944.

Q What was the further story on this machinery?

A As far as I know, it remained in Offenbach and it was not opened because at that time Offenbach had already been bombed heavily.

Q After the end of the war, was it still in good condition?

A It remained intact and upon the instigation of an America-Polish Commission, it was returned to Poland to Boruta.

Q Not to Wola?

A No.

MR. SPEECHER: Mr. President, with respect to the latter statements of the witness concerning the history of this particular piece of machinery from the time it was disassembled from Poland and finally returned to Poland, we are in a position to state that these are the facts and that it need not be gone into further because it is agreed between the parties.

THE PRESIDENT: Very well; very well.

DR. von KELLER: I think the prosecutor for his stipulation.

Q What would have happened with this if Farben had not sold this machinery and if it had not remained in Wola?

A It would have suffered the same fate as the other installations in Wola did which by decree of the district chief Radom, of the 28th of December 1943, were confiscated.

Q May I again refer to Mr. Szpilfegol's affidavit in this connection who states on the pen ultimate page the gentlemen of Farben took almost all the installations away, machinery parts, autocraft and so on? May I refer to this particular point? What was the fate of the remaining-machinery?

A I should like to answer in telegraph style.

20th of May 1943 decree of industrial agency Cracow, or non-used machinery to be sold as scrap or old machinery to monopoly holder Binder, Warsaw.

Q Did this monopoly holder have anything to do with Farben?

A Not the least.

Subsequently special confiscation of all of Wola's installations by

District Chief Radom for Binder. According to an estimate of Polish experts --

THE PRESIDENT: That is enough of that, I think. It shows what became of it and we wouldn't be interested in any further details along that line, I feel quite sure.

DR. VON KELLER: Mr. President, may I be permitted to ask whether Farben had anything to do with the payment, either accepting of the purchase price or fixing the purchase price?

THE PRESIDENT: You may answer the question.

A No....

THE PRESIDENT: Mr. Witness, you have answered when you said "No."

Q Mr. Witness when did you hear about Wola for the last time?

A Since September 1943 I was not in Poland any more. In the middle of 1944 I was informed that because of partisan fighting communications which Wola had interrupted --

Q That is enough.

DR. von KELLER: Your Honors, I now turn to the third plant producing dyestuffs in Poland; that is Winnica.

Q Mr. Witness, when did you visit Winnica for the first time in your Polish visits?

A After the beginning of the war, 30 September 1939.

Q From the data submitted by you one can see that you visited Winnica first. Why did you visit Winnica first?

A On the 17th of September 1939 the Russian troops had marched into Poland and the Nistula 12 kilometers distant from Warsaw.

Q Did Farben or German industry have any special interest in Winnica?

A Farben was especially interested in Winnica. As far as shares were concerned Winnica belonged to the French dyestuffs factories and to the I.G. Chemie in Basel, Switzerland. Industrially, however, the French and Farben plants were interested.

Q In what ratios?

A Fifty-fifty.

Q Did Farben have any other interests besides industrial ones in Winnica?

A Yes, Farben constituted, so to speak, the entire volume of business of Winnica from their own business.

Q Had Farben built any particular installations into this plant?

A Not Farben itself but the French had built an antrachinon plant. The process used in this plant was a Farben secret.

Q Please describe briefly why Winnica was founded and in what form the German dyestuffs industry participated in this foundation.

A Polish increase in tariffs 1928 of 2.8 sloty to 11.2 sloty; result import possibilities for chief production with a sales price below the tariff discontinued. At the same time Frenchmen participate in the world war market in the Tripartite cartel but cannot furnish enough.

Q What do you mean by that, "not furnishing enough in the Tripartite cartel?"

A They were not able to fill their quota. As a result the Polish-French relations: first possibility for both Farben, French in the country to produce; second, French can increase quota.

Q Perhaps, you can use complete sentences instead of that telegram style. It is more understandable.

A Am I to repeat what I said?

Q From now on it is better if you use complete sentences.

A Frankly, the French had no business in Poland during this particular period of the Tripartite cartel. Their share was less than 1%. In 1931 it was increased to 6% and in 1934 to 30%.

Q What was done to increase the French share?

A Mainly, Farben — but also the Swiss firms — had to cede some of their business. Added to that was the fact that in 1931 Winnica acquired a monopoly for furnishing to dyestuffs for dying the Polish military cloth, the uniform material, khaki. The Polish Ministry of War granted this monopoly to Winnica.

Q Witness, why was Winnica founded? A little while ago you spoke about the increase in tariffs.

A I said in order to produce the dyestuffs in the country which they were no longer able to produce after the increase of tariffs.

Q Who were the founders of Winnica?

A Only the French as far as one could see because, lacking a commercial contract, the German firms in Poland did not have the right to found any agencies. Internally, however, Winnica was constituted on a basis of 50% to 50% by shares of the French group and of Farben. The production program was drafted jointly. The sales, with the exception of chaki, which was handled solely by the French representative, was also otherwise handled on a 50% to 50% basis by the German sales organizations and the French sales organizations.

Q Who were the members of the French group?

A Members of the French group were Kuhlmann, Saint Denis, Saint Clair de Rhone and Societe de Mulhouse.

Q Was the relationship between Farben and the Swill firm that you mentioned?

A I didn't mention any Swiss firm, not now.

Q Excuse me.

A Mulhouse is Muhlhausen in Alsace-Lorraine.

Q How were the interests of Farben safeguarded?

A How do you mean that?

Q. You said because of a lack of a commercial treaty between Germany and Poland Farben did not have the right to found any branches, could not become a partner.

A. The administrative organizations of Winnica consisted exclusively of five French gentlemen: Frossard — that is Joseph Roscard as the chairman, and two Polish gentlemen. The Farben share in the stocks upon the request of Farben was taken over by the I.G. Chemie, Basel, Switzerland with an option for Farben in Frankfurt, that they might be permitted to buy back the shares at any time they desired. Beyond that Farben in Frankfurt had received the word of honor from I.G. Chemie, Basel, that the latter would not make I.G. Farben in Frankfurt suffer any damage from this affair.

Q. Did Farben and the French group check their books constantly and mutually?

A. Every business transaction was accounted on a 50-50 basis. From the time of the foundation of Winnica 1929 I myself considered myself the second father of Winnica. Farben received copies of all original documents of Winnica by way of Paris and they were able to keep a control balance sheet in Frankfurt independently.

Q. What was the relationship of this calculation at the beginning of the war.

A. At the beginning of the war from long term credits in the form of goods or money by way of Paris we had a claim of approximately 242 thousand marks. From short term advance assets of the plants we had about 61 thousand marks. Altogether that is 303 thousand marks.

Q. I think you have made a mistake in your arithmetic. What was the long term operation credit?

A. Oh, 4.2 thousand marks.

Q. I see. That is all right now. Who had granted these credits and at what ratio?

A. Everything was handled as I have said already, on a 50-50 basis, French and Farben.

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A. The administrative organizations of Winnica consisted exclusively of five French gentlemen: Frossard -- that is Joseph Frossard as the chairman, and two Polish gentlemen. The Farben share in the stocks upon the request of Farben was taken over by the I.G. Chemie, Basel, Switzerland with an option for Farben in Frankfurt, that they might be permitted to buy back the shares at any time they desired. Beyond that Farben in Frankfurt had received the word of honor from I.G. Chemie, Basel, that the latter would not make I.G. Farben in Frankfurt suffer any damage from this affair.

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A. Every business transaction was accounted on a 50-50 basis. From the time of the foundation of Winnica 1929 I myself considered myself the second father of Winnica. Farben received copies of all original documents of Winnica by way of Paris and they were able to keep a control balance sheet in Frankfurt independently.

Q. That was the relationship of this calculation at the beginning of the war.

A. At the beginning of the war from long term credits in the form of goods or money by way of Paris we had a claim of approximately 242 thousand marks. From short term advance assets of the plants we had about 61 thousand marks. Altogether that is 303 thousand marks.

Q. I think you have made a mistake in your arithmetic. What was the long term operation credit?

A. Oh, 4.2 thousand marks.

Q. I see. That is all right now. Who had granted these credits and at what ratio?

A. Everything was handled as I have said already, on a 50-50 basis, French and Farben.

Q. Of what did these operational credits consist which Farben gave to Winnica by way of Paris and how did Winnica invest these credits?

A. In the buildings and in stock piles.

Q. What was the condition in which you found Winnica when you visited it for the first time?

A. It was practically undamaged. The director and plant manager were present. He was an old employee of Farben.

Q. For what length of time had he been an employee of Farben?

A. Since 1909, just as Schocher and I, for 30 years.

Q. How long had he been with Winnica?

A. Since the foundation of Winnica.

Q. I have submitted to you four photographs, witness.

DR. von KELLER: I ask the Tribunal that I may be permitted to offer them later as von Schnitzler exhibit No. 8. The photographs are designated "E", "F", "G", and "H" respectively. May I be permitted to offer them for identification only now?

THE PRESIDENT: You are marking them Exhibit 8 and it consists of four photographs marked "E", "F", "G" and "H" and you are asking now that they be marked solely for identification?

DR. von KELLER: Only for identification.

THE PRESIDENT: Very well.

Q. Mr. Witness, what do these photographs represent?

A. I took them myself on the 14th of October 1939. "E" represents the entrance to the Winnica plant. "F" represents the Intermediate Production Building and in the middle of the photograph the boiler house-- and on the right the office building. "G" is the Intermediate Plant seen from the back. Plant "F" represents on the right the naphtol plant and on the left the waste products purification plant.

Q. That is enough. Do these pictures correctly represent the plant?

A. The pictures are original photographs enlarged and they represent an impression which corresponds to the truth, to reality.

Q. What did you undertake after you arrived as a trustee in Winnica?

A. Just as in the other cases I ordered that the production that had begun should be completed. We had coal in Winnica but for reasons of saving fuel we didn't want to produce during wintertimes. That was not necessary. Winnica had 183 thousand kilograms of stockpile material.

Q. What did you do?

A. Commercially again I listed inventory. I found out what the status was. Here was a difference, however. Winnica had accounts in the bank. I.e., the trustees, recalled Dr. Hierszowski and then immediately engaged him again as plant manager and director. It is true, however, with a limitation of his plenipotentiary powers. He was able to act. He was given the right to dispose up to 5 and later up to 10 thousand zloty.

Q. Witness, you were just now speaking about the coal supply. What did this look like?

A. Winnica had no railroad connections either but the distance to the next railroad station was only 6 kilometers and it possessed a 5-ton Chevrolet truck which had been delivered a few days before the beginning of the war and which had been hidden under some hay.

Q. How did you try to solve the coal problem?

A. That became more and more difficult. The Wistula --

THE PRESIDENT: Just briefly, Witness; we will not go into a great deal of detail on this coal problem. Summarize, if you will, please.

A. It became more and more difficult. We had used just and that was not possible. We tried to loan coal frankly, for the entire time we had some difficulties.

Q. What were the results of these difficulties in the coal field?

A. In 1940 we worked for seven months. We produced 102 thousand kilograms. In 1941 we worked for 11 months and we produced 95 thousand kilograms. That was the peak. In 1942 we only worked four and a half months and produced 39 thousand kilograms.

Q. What difficulties resulted in the sales field?

A. Small possibilities of selling in the Government General where

there was industry which did not require much dyestuffs, tariffs and foreign exchange, boundary, with regard to the Warthogau where the German prices which were 20% to 40% lower had been fixed by regulations.

Q. What had happened to the former Polish territories? That is, the areas in which the textile industry was situated?

A. The area around Jolna and Bialystok with very considerable production of military cloth was lost to us because of prices.

Q. Did Minsk also supply the leather industry?

A. Yes, that is Leningrad but that was in Russian hands and no longer accessible.

Q. You said a little while ago that Linnica supplied dye-stuffs for military cloth. What percentage did this dye-stuffs produced correspond to from the entire sales?

A. The Linnica business to furnish khaki cloth with its dye-stuffs amounted to about one-third of the entire turnover. It was most strongly felt immediately before the war in 1938 and '39.

Q. After you had administered Linnica in 1940 and '41 as a trustee I should like to ask you what happened in 1941 in regard to Linnica in the French German relationship.

A. During the Franco-German negotiations the French group and Farben agreed to transfer the French share in the stocks to Linnica for payment of one million Reichsmarks, and 1 to twenty million French francs at the time, and deletion of the actual demand from their claim to Linnica.

Q. When did Farben become the sole shareholder of Linnica formally? I beg your pardon. Your Honor, my last question had been, when did Farben formally become the sole shareholder of Linnica?

A. In February 1942, by buying back the shares which had been held by the Swiss in Basel.

Q. A short while ago you said that Farben had been given the word of honor by I.G. Chemie in Basel that I.G. Chemie should not suffer any damage from Linnica. I wanted to clarify this. Is it correct that I.G. Chemie in Basel was not to suffer any damage as a result of this Linnica business business?

A. Yes, the I.G. Chemie in Basel was not to suffer any damage.

Q. And in Frankfurt the I.G. Farben bought the shares from them — from the I.G. Chemie in Basel?

A. Yes, that is correct.

Q. What did the fact mean that Farben had now become the sole shareholder of Linnica and how did this influence your personal relation with Linnica?

A. I resigned as a trustee of Linnica and was elected as the director by the Vorstand.

Q. What was the further fate of this Winnica plant?

A. In December 1942 the high tariffs were abolished on all German goods in the Government General, and the German prices in the Government General were prescribed to be equal to that in Germany. That was the Lockout of Winnica.

Q. What losses would you have then had to take if you had kept operating?

THE PRESIDENT: He wouldn't be interested in the details. It is all right to show that the plant couldn't operate profitably and that will be enough on that.

BY DR. VON KELLER:

Q. What conclusions did you draw from this fact that you were not able to manage the plant properly any more under circumstances?

A. We had to close Winnica down.

Q. What happened to the machinery in there?

A. In order not to have to turn them over to Binder, the machines were transported to Soratz, and installed there.

Q. Is that the same man, Binder, who held the monopoly for buying scrap?

A. Yes.

Q. What happened to the real estate and the buildings?

A. Real estate and the buildings were leased to the neighboring factory, Pharmacia, for approximately one hundred thousand zlotys per month.

Q. What did Pharmacia produce?

A. Pharmacia produced vital pharmaceuticals.

Q. When did you receive last news from Winnica?

A. I received the last news from Winnica at the beginning of 1945 in Frankfurt from the main bookkeeper. He said "Winnica occupied by German military middle June '44, coming back from Russia." He said that he himself had been evacuated across the Vistula.

Q. I now come to a particular point, the so-called antrachinon Plant. This machinery is mentioned in Document Book 56, in Exhibit Number 1160, MI 5396, page 27 of the English and page 61 of the German; and also in Exhibit 1161, MI 8400, page 29 of the English and page 63 of the German. It is furthermore mentioned in Exhibit 1626, MI 4398 — I believe it is page 29a of the English because the document was furnished at a later time and page 63c of the German. Will you please explain to the Tribunal what the antrachinon Plant is and what it is used for?

A. I mentioned already that Kinnick was granted a monopoly for furnishing dye-stuffs to the khaki plants which was granted to them by the Polish War Ministry. The dye-stuffs had been invented by the Ordinarium for Chemical Inventions at the Polish University of Warsaw. They had first been offered to Farben and Farben had passed them on to the French Group, in particular St. Clair de Rhone. The military product for these dye-stuffs was antrachinon. Kuhlmann in Paris held a license to operate the Farben antrachinon process. By agreement of Farben this process was now also applied in Kinnick without their having to pay any fee for the licence. It was only a small plant of about five or six tons monthly production. Kuhlmann and Farben were obligated to keep the process secret.

Q. Did I understand you correctly that you said that the antrachinon process was a Farben process?

A. The antrachinon process was a Farben process.

DR. VON KELLER: Please forgive me, your Honors, if I ask the witness to give a short description of this particular process because it is important to understand what was later evacuated.

BY DR. VON KELLER:

Q. Can you describe briefly what this plant looked like, what the essential parts were, and what its value consisted of?

A. I am a businessman and I am not a chemist, but I will try to explain. Machinery consisted of two similar ovens, I would say. These

ovens had been constructed of fireproof tile and glazed brick, "Schamottstein". The pure anthracene was sent into these ovens which sublimated as soon as it was heated and was transformed into another chamber and precipitated as a loose powder in an adjoining chamber. What the machinery looked like on the inside, I don't know, but the conduit of these gases and the arrangement of the machinery on the inside was the affair of somebody else and was probably the main point in the process.

Q. Were the main parts of this machinery masonry or were they metals? Were they rare metals -- valuable metals?

A. I had the impression that the main part consisted of masonry. The ovens were about six meters long, one and a half meters wide, and approximately the same height.

Q. That is enough. How did Farbman try to safeguard their interest in keeping this process secret?

A. I already stated that the construction of the machinery was the secret of the process. Therefore Farbman tried first of all to make the machinery available by way of a lease agreement and to remove it from the proximity of the frontier. The trusteeship agency in Cracow again suggested that it be sold. Farbman accepted this suggestion. A Polish certified engineer estimated the price. They demanded one hundred thousand zloty. Farbman paid the price, and the machinery became, in 1941, property and was dismantled. There was little metal among this machinery.

Q. Was this purchase price of one hundred thousand zloty equal to what the Polish certified engineer had estimated?

A. As far as I remember, yes, but it was paid back to Winnica.

Q. Do you know for what reasons Farbman considered that they were justified to safeguard this plant, either by way of lease or purchase?

A. The secret of the anthrachinon machinery was in the inside of the machinery. Kuhlmann and Winnica were only the licensees. Whoever owned the machinery also owned the process.

Q. What is enough on this subject. You said yesterday, Mr. Witness, that there were four large Polish dye-stuff factories and in that connection you mentioned Fabianice which was also connected with the cartel arrangement but which was held by the Swiss. Did your trusteeship administration also extend to Fabianice?

A. No, in September 1939 Farbman had offered their services to Ziba in Basel to represent their interests in Fabianice. But the Swiss did not accept.

Q. You had something to do with Fabianice?

A. From October until January Fabianice received forty-five intermediate products from Goruba. I had known the gentleman from Fabianice since 1929.

Q. That is sufficient. I now turn to another plant which is

mentioned in Document Book 55; that is document NI 6064, Exhibit 1168 on page 89 of the English and page 129 of the German. This document speaks about a plant or a place Eliza-- in Poland. Do you know anything about that?

A. I don't know anything at all about that.

Q. I now turn to another plant which is also mentioned in Document Book 55 and 56. It is called Sarayna. It is mentioned in Document Exhibit 1133, NI 1149, also in Book 55 on page 34 of the English and page 54 of the German. It's also mentioned in Exhibit 1150, that is Book 56 on page 4 of the English. It is NI 6831, page 4 of the German as well. What was the story of this Sarayna?

A. Sarayna was a plant situated in the central industrial region of the Vistula and the San. It was an explosives plant.

Q. Who was the man who gave the order to build this explosives plant?

A. The Polish Ministry of War. The man who was charged with this the construction -- was Boruta who had an option for its later operation. It had been financed by the Landeswirtschaftsbund, the National Bank of Industry, the account of the War Ministry.

Q. Were you, as trustee of Boruta, competent for Sarayna as well?

A. In the beginning this was not quite clear. There was only the final figure in Boruta about Sarayna. The bookkeeping itself was done in Sarayna. By way of negotiations with the trusteeship agency, I clarified whether we were competent or not. After the Government General had been established, Sarayna and Boruta was a plant that had been divided into two parts and a special trustee was appointed.

Q. Did you exercise any trusteeship functions in Sarayna?

A. Only until the relationship had been clarified. We were informed as to this on 3 October when the Sarayna administrator came to Boruta and we gave twenty thousand zloty to this administrator of Sarayna for the salaries of the employees and workers for the account of Building Enterprise Sarayna.

Q. Did Farber have anything to do with Sarzyno?

A. As far as I know not the least.

Q. Did Farber dismantle any machinery?

A. No.

Q. This exhausts this chapter of Sarzyno. I now turn to one further point which the prosecution has stressed. It is the purchasing contract of Boruta -- this is Exhibit 1150 just mentioned by me, Document NI 6831, Book 56, English page 4, German page 4. That is the beginning of the document. Under paragraph 7 of this purchase contract a passage is contained which reads -- "All financial assistance, annuities, or similar payments which may have originated from previous employment contracts signed in the days of Polish control, or any other agreements directed at the Boruta, in particular payments from the so-called savings fund, will not be taken over by the purchaser." Can you tell me what was the state of affairs that caused this paragraph 7 to be written?

A. In the case of Boruta Farber bought only the real estate, the buildings and the stock piles. All other assets and liabilities which antedated the first of October 1939 remained in the possession of the liquidator whom the Klein Trusteeship Agencies had appointed. This liquidator considered the savings funds, as a priority claim in principle and he had drawn up a list of these savings funds.

THE PRESIDENT: We shall take our recess.

DR. VON KELLER:

Q. Witness, in the complex you just treated I would like to ask you: Were you a member of the Nazi Party?

A. Yes. On the 1st of June, 1930, I joined the Party. I saw myself forced to do so because I was in steady contact with all agencies and all Party authorities. My empty buttonhole was always conspicuous, and my remarks were made: "Well, he is a Farben director. He thinks he doesn't have to do it." Farben had a bad reputation with the Party. And then finally, in July 1940, I joined the Party for business reasons.

Q. Witness, I asked you this question also because of the question to come. Don't your earphones work?

A. No, they don't

Q. I asked you this question also in view of paragraph 7 of the sales contract Bertha which we have just discussed. When we discussed this paragraph 7 the representative of the Prosecution stated, on page 2619 of the English transcript and 2618 of the German transcript: "I believe that paragraph 7 again shows the whole racial and Germanization policy --

MR. SPEECHER: Objection, and I move that the remark be stricken.

THE PRESIDENT: That is not a matter of interest or concern of the witness, but perhaps counsel might justify his statement as being directed to the Tribunal for the purpose of showing the object he has in mind, so far as his testimony is concerned.

DR. VON KELLER: Mr. President, I believe that if one claims that Farben had looted three dyestuffs factories then, in order to judge the responsible men and to judge their conduct, it is important what their attitude was towards the problem which has been called here "a racial and Germanization policy," and even to the human problem. And I wanted to ask the witness to describe in a few words what social measures Farben took, or in what social measures they took, they, who were supposed to be looters, and how they affected those workers.

THE PRESIDENT: Ask your question.

FR DR. VON KELLER:

Q. Witness, can you tell me in a few words what social measures Farben took in the various plants? And I ask you to consider whether a difference was made between Germans, Poles, or other people.

A. First of all--Bertha. Despite the fact that it was forbidden, we gave sickness relief to Germans and Poles who were employed there, up to three months to workers and employees. We gave them support for their families, either as a donation or as a loan. We have, and I think as the first plant in the Warthegau engaged a factory physician who treated Germans and Poles. As early as in the summer of 1940 he detected cases of the Egyptian-eye ailment. We improved the dressing rooms and mess halls and installed a factory kitchen, and we did this with the opposition of the Labor Front. And we managed to give Germans and Poles the same food in the same room at the same price. We saw to it that the tariff Class I, like in Lodz, applied for Egloff, which had first been in Class III, the difference between Class I and Class III was about twenty percent. When the Polish wage cut was introduced, we took no of the possibility to give additional compensation and we did this so extensively that we had no case, practically speaking, where Polish workers did not get the same wages as he did before.

Q. What were the special social achievements in Winnica?

A. In the Winnica a savings plan was installed also, with bonuses after an employment of five years. When the Winnica was not used any longer I paid out all the savings and bonuses. A factory kitchen in the Winnica was installed with its own plantings of potatoes and other vegetables. We had to deliver these potatoes which we raised ourselves for 12 Zlotys, and on the black market I bought potatoes for up to 300 Zlotys for 100 kilograms.

In the Winnica from the beginning of 1940 until the middle of 1942 all workers received a half a liter of milk every day. The extra expenses for the 60 workers and employees in the Winnica who were all Poles, and amounted in the second half year of 1940 to more than half of the entire wages and salaries.

Q What expenses were higher than the wage payments?

A Well, the expenses for the kitchen in the Winnica in the second half year 1942.

Q Did you take similar social measures in Wola, too?

A In Wola —

THE PRESIDENT: Mr. Witness, you may answer that if you came to whether you did or did not take similar measures in Wola.

A Yes.

DR. VON KELLER: That suffices. Don't be so ostensive, I have no further questions.

THE PRESIDENT: Do any of Defense Counsel desire to interrogate this witness further?

DR. WACHNER: Wagner for Wurster.

Your Honor, my client has been named by the Prosecution, because of his brief Polish trip. This gives no cause to question this witness and I shall have two brief questions.

DIRECT EXAMINATION (continued)

KERMAN SCHWAB

BY DR. WACHNER (on behalf of defendant Wurster):

Q Witness, in connection with the chemical industry in Poland, did you ever speak with Dr. Wurster or correspond with him, or did you have anything to do with him?

A No.

Q Did you ever hear that Dr. Wurster had anything to do with the question of the chemical industry in Poland?

A Yes, Dr. Schoener told me about the trip of Dr. Wurster at this time — or, rather, at this time I was not in Zgierz.

Q That is all you ever heard?

A Yes.

DR. WAGNER: Thank you. That is all.

THE PRESIDENT: Anything further, Counsel?

Then it seems that the Defense is through with the witness. The Prosecution may cross examine.

CROSS EXAMINATION

HERMANN SCHWAB

BY MR. HENGLAR:

Q Mr. Schwab, do you speak the Polish language?

A No. I understand a little bit.

Q You were in Poland most of the time from October 1939 until the end of 1943, is that correct?

A Until September 1943.

Q I should now like to mark WL-7369 as Prosecution Exhibit 1857. This is an affidavit of this witness dated June 24, 1947.

I would like you, Mr. Schwab, to first read the first part where you mention that Dr. von Schnitzler sent for you on the 7th of September 1939.

Did you read it?

A Yes.

Q Now, is it not true that from the very beginning it was the objective of Farben itself to administer and operate the Polish dyestuff factories?

A That is correct. In the actual exterior circumstances, but the motives were, as the document shows at present, to prevent that these —

Q I didn't ask for the motive, Mr. Schwab. You said yesterday when contacting the Reich Ministry of Economics it was Farben's idea that the economic life in Poland was to be supported and, above all, the Polish market was to be supplied. Now, is it not true that in accordance with von Schnitzler's own suggestions, the Reich Ministry of Economics appointed you for the distinct purpose that you adapt the plants

to meet the requirements of the German war economy and the German export trade with neutral countries?

A Mr. Newman, may I give an explanation for this phraseology?

Q Will you first answer my question, and then you may explain it, if the Court allows. And, is it not true that this is the purpose for which you were appointed?

THE PRESIDENT: Witness, you should, if you can, answer the question "yes" or "no," but it is not obligatory on you to do so. If neither "yes" nor "no" —

WITNESS HERMANN SCHWAB: Ich kann —

THE PRESIDENT: Just a moment. If neither "yes" nor "no" conveys to you what you should say in order to respond to the question, you may answer it in your own way.

WITNESS HERMANN SCHWAB: Thank you.

A The intention of Farbon — the motives of Farbon were not to let these plants fall into the hands of people who were not expert in order to prevent that they be misused and exploited. That's true especially for the supplies. We had made our experiences in the first World War and in the inflation where hoarders knew how to acquire a lot of supplies, and who until the years 1935-36 disturbed foreign markets. I personally had such a case in Latvia.

THE PRESIDENT: Mr. Witness, you have answered the question, and wait for another now.

MR. SPEECHER: Well now, Mr. President, I was going to suggest that the question be repeated because to that question as to why he was appointed there was no answer whatever.

THE PRESIDENT: We have no way of reading the question back, but Counsel may ask the question again if he wishes to direct the witness' attention to what the question was.

Q My question was: Did the Reich Ministry of Economics appoint you for the distinct purpose that you adapt the plants to meet the requirements of the German war economy and the German export trade

with neutral countries? Maybe your recollection will be refreshed if you will turn to page 2 of the affidavit before you.

A What passage here?

Q Page 2.

A In the document it says the installations —

THE PRESIDENT: Mr. Witness, we are not concerned with what the document says. We have the document. We can read it. You should answer the question, and Counsel has asked you to look at the document before you answer. Now, what we want is the fact, not what the document says, because we can read that.

A The document says what the Prosecutor has mentioned.

THE PRESIDENT: We are not concerned with what the document says. We want to know what you have to say about it. You have the document. You may look at it for whatever it may be worth to you. Please answer the question.

MR. NEWMAN: In fact, my question is answered, Mr. President.

THE PRESIDENT: I am not sure. It might be to your satisfaction but as far as I am concerned I don't know that he did answer it. I am not sure. All he said was what the document says.

DR. SIMERS: Your Honors, for the second or third time the witness was not given the possibility by the Prosecutor to make additions. That is, he does not have the possibility of answering completely. If I understood correctly, the Jurat reads that one should say the truth and one should not keep anything from you. Therefore, it is in the sense of the oath that the Prosecutor might have the kindness to give the witness an opportunity to comply with his oath.

THE PRESIDENT: My only concern was as to whether or not the witness was trying to answer as to what the document said and while he has the document before him — it has been passed to him — the question was for the fact, not what the document said. This is not complicated matter, and if Counsel will ask another question we will try to get this thing

into the proper channels here.

MR. HERMANN: I have no more questions for this witness, on this point.

THE PRESIDENT: Very well.

Q Mr. Schwab, when you reported to the —

A Please talk a little more slowly.

Q When you reported to the ETO, "Treuhandsstelle-OST," or other Government agencies, were you in the habit of sending copies of your reports to I.G. Farben?

A As far as I can recall, I sent to Government agencies only one preliminary report. Later my reports went merely to the Trustees agency of the first reports — that is, if I remember correctly — I sent Farben a copy, but it was merely a matter of the exposition of the situation which I found there.

Q Which Vorstand members of Farben visited Poland, according to your knowledge, at the end of 1939 in order to inspect Polish factories?

THE PRESIDENT: Counsel, how do you justify that as the proper cross examination of this witness? In the interest of time, we should like to hold the cross examination down to its proper sphere. We have taken a lot of time with this witness. And, if anything is proper, we shall place no limitation on you, but we do not recall where the Counsel for the Defense went into any such subject as to justify that cross examination.

MR. NEWMAN: I think it refers to the last half of the examination, but I drop the question.

THE PRESIDENT: Very well.

Q Now, turning to the Boruta, part from you and Schoener, were there any other Farben employees working in Boruta before Farben took title?

A Yes.

Q How many according to your recollection?

A There was a bookkeeper, a chemist, and a sales manager. I alone could not do the work in two countries, and the Polish personnel was inexperienced and did not know the German laws and did not know the language; therefore, they were not in a position to work alone.

Q Did your answer refer up to the end of 1941 when Farben acquired title to the Boruta?

A This refers to that time, yes.

Q Then, to refresh your recollection, I would like to submit Document KI-1168 to you and I would like to give it the next Exhibit Number 1858.

A Yes. I beg your pardon. At the moment I didn't remember. Outside of the departmental chiefs there were a few German auxiliary workers who were necessary in order to rearrange the bookkeeping to the German system. Then there was a master locksmith to replace an engineer and the people who were mentioned here -- a mathematician.

Q Is it not true, Mr. Schaub, that you knew that foreman Heinzig was taken from I.G. Farben Wolfen plant and taken over to Boruta in order to direct workers there?

A Mr. Heinzig, when the Boruta was taken over, was taken over by Boruta, but that no longer was Boruta, but the tar-dyestuff works Loda, which were then exclusively Farben.

Q You mean this was, if I correctly understand, after Farben acquired title to Boruta?

A Heinzig had been there previously and after the title had been taken over by Farben he remained, as far as I recall.

Q Did Farben consider itself the lessee of Boruta even without a lease?

A Not as the lessee.

Q Did Farben consider itself the lessee of Boruta even without a lease agreement?

A No. I said yesterday —

Q Now, in order —

A I said yesterday —

THE PRESIDENT: You have answered the question. This is rather inconceivable -- how there could be a lessor or lessee without a lease agreement. Lessee is implied.

MR. NEWMAN: My question, Mr. President, was whether Farben considered itself to be the lessee and acted accordingly, and I would now like to show the witness HI-8396. This, Mr. President, is our Exhibit 1160.

PRESIDENT: Counsel, are you intending to pursue the matter -- that while there was no lease agreement, that Farben regarded itself as a lessee? Is that what your theory is?

MR. NEWMAN: Mr. President, my point is this: We heard at 5 o'clock yesterday and today about what Farben intended to do in Poland and what the position of Farben and of the Trustees was before Farben acquired title. Now, I think what the witness said yesterday on this point is rebutted by this document and I would like to refresh his recollection to prove this point on the strength of this document where

Farben before it was elected to the authorities called itself the lessee of Boruta in early 1940.

THE PRESIDENT: Well, in the absence of the document I withdraw my remark, but I am still dubious about it.

Q If I may repeat, this is Document Book 56, page 27 of the English and page 61 of the German. And if you will kindly see, this is number two of this letter.

A In my opinion, this is a formulation which was just made on the spur of the moment. Lease agreements were pending at the time, and Farben was of the belief that it would come to a favorable conclusion. The Krauch suggestion for the HTO could not be expected by Farben.

Q You testified yesterday that by your activities as Trustee you managed to keep operating one of the three plants of which you were Trustee, and that the economic life of Poland was to be supported thereby. Now, can you tell us at the end of 1944 what percentage of the Polish workers who had worked in Boruta in 1939 were still employed in the Boruta plant, approximately?

A I can not give you the percentage. The composition of the Boruta personnel, that is, workers and employees, under the trusteeship administration was always two-thirds Poles, one-third German and ethnic Germans, approximately. In 1939, before the beginning of the war, Boruta had a great number of personnel. They were just building up the pharmaceutical department; a new supply house was being built, and this work mostly conducted under their own direction. Only, to give an example, the great masses of ice which are needed in the dye stuff production were taken by hand out of the pond. The trustees, already in the first winter, had mechanized this ice production.

Q Were you informed as to the number of Polish nationals who were evacuated from Zgierz in connection with the Germanizing of the Warthegau, as a new organ of the German Reich itself?

A I can not give you any figures. In connection with the plant

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kitchen we helped a Polish peasant to keep his farm by employing him. I may add here that as early as in the year 1941 the tendency of bringing Poles out of the Warthegau, in view of the manpower, was reversed because the people realized that the Polish workers were necessary. And it was just Schoener who was the tariff negotiations and director of an I.G. plant and had a great deal of experience, told the men of the Labor Front always and emphasized to them that if the Polish workers were treated well they would be equal to the German workers.

Q You know the Polish workers were evicted from Beruna so that the Germans could live there, did you not?

A Yes. May I add something here. We had no influence on this. These were governmental measures. We had chemists and workers who had been evacuated from their homes, in the cities, housed in the region where the plant was. And in such case . . .

THE PRESIDENT: You have answered that enough. Wait for another question. Go ahead.

BY MR. NEWMAN:

Q How many of the Polish workers of Jewish extraction, who worked for the Beruna in 1939, continued to work for Beruta in December, or at the end of 1944?

A To my knowledge, before the first of September, 1939, the Beruna had neither Jewish workers nor Jewish employees. The Beruna was a Polish government plant, and whoever knows the conditions, knows that in such plants there were no people of the Jewish faith, and not even or only a few Protestants.

Q Is it true that one of the Varban foremen beat a Polish worker in the Beruta plant, to your knowledge?

A That was the one master locksmith Hiescha mentioned before. That was a typical case where a foreman grew into a higher position and acquired the so-called eastern fit. I myself was never present when something like that happened, but my people, the previously mentioned salesmanager, had told me about it, and I explained to Schoener, and his assistant Dr. Matzdorf, and asked that this be done away with.

Q Did you make sure that such steps were successful?

A During your interrogation I already told you that for disciplinary reasons, we had to draw a sharp line between technical and business matters, and we had to keep to that line. I informed Schoener and Matzdorf about these matters, and they took steps.

DR. VON SCHNITZER (Counsel for the defendant von Schnitzler): Your Honor, in order that the transcript be corrected, I would like to correct a small translation difficulty. The witness was speaking of an Eastern Mania. The translation would best be "mania" instead of "fit".

THE PRESIDENT: Very well.

BY DR. NEWMAN:

Q Dr. Schaub, you testified today with respect to the steps taken in the interest of the Beratz workers. Were you in this connection, or was Farkas, in contact with the office for the strengthening of Germanism?

A One could not call it contact. The Reich Commissioner for the strengthening of Germanism in the East, who in December, 1940, interfered in the negotiations of the Farkas and Trusteeship Agency, with the reason that this was not merely a purely commercial matter, but that ethnic and racial considerations in the East would have to be taken into consideration also.

Q Was SS Brigadefuehrer Greifelt the head of this agency?

A Yes, to my knowledge. The supreme chief was Himmler.

Q Do you remember that you took a number of steps to please Greifelt?

A Does this question refer to myself, Dr. Newman?

Q Either yourself or Farkas, in connection with the Beratz plant.

A I never saw Herr Greifelt, nor did I talk to him. I merely knew of the conference between Dr. von Schnitzler and Greifelt.

THE PRESIDENT: You were not asked about any conference between other parties. You were asked as to your own contacts.

BY DR. NEWMAN:

Q Did Dr. von Schnitzler prepare or take steps to follow the Germany racial policy in Poland?

THE PRESIDENT: Counsel, is that cross-examination?

MR. WILSON: I think it is.

THE PRESIDENT: I will be glad to hear your views. I am doubting, but I will listen to you.

MR. SPEAKER: Mr. President, may I say a few words?

THE PRESIDENT: Yes.

MR. SPEAKER: The whole conduct of Farben and of these defendants in Poland had some relation to what was going on in Poland, by Himmler, and we have introduced the decrees concerning that, and by the defendant, Frank, in the first DIT trial, who put a lot of measures into effect in Poland. We have just had a recitation by this witness of a rather idyllic situation of maintaining the economy in the Warthegau, and we are now attempting to show that this was a part of the policy of Germanizing that section of the world. Regardless of what happened to the Polish people who were there, and to show that Farben's settlement steps and Farben's activities were directed only to sustain the war effort.

We have already shown it was to keep other dye stuffs people from coming in, and third, we are now about to show that it was done in connection with the agency of which Greifelt was the immediate head in Poland, and Himmler the ultimate head, and I believe, Your Honors, will recall how Schnitzler went to Greifelt in order to get the Guthred brothers pushed out, and in order that Farben should get its way in Poland.

THE COURT: Did this witness testify as to anything in connection with that?

MR. SPEAKER: Certainly, Mr. President. This witness talked about the efforts to improve German, improve the economy in Poland during the occupation for the benefit of the Polish economy, and we are about to show that the efforts on behalf of the so-called Germans who were in Poland, and the Germans who were brought there, acted to exclude Poles from that area, and to keep them out of the economy.

THE COURT: We will start off. It is possible my memory is defective. Go ahead.

BY MR. SYLLER:

Q I do not think you answered my last question. Did Mr. von Schnitzler prepare or take steps to follow up the general Nazi racial policy in Poland?

A No.

Q Did you or Mr. Schnitzler prepare steps in connection with the settlement of German employees of the Beruta plant, in order to strengthen Germanism beyond the old Reich borders?

A No. I may explain, in the order to extend Beruta to invest 5.2 billion marks, we had to obligate ourselves to do something in a social respect too, and considering the general housing situation in Poland and in Silesia, I would say, that according to official Polish statistics, 98 per cent of the apartments were located in apartments in Poland.

If the Targen took over Beruta, we were obligated already from our tradition, to create better conditions for the workers in Beruta.

MR. SYLLER: Mr. President, I think the Tribunal is somewhat displeased with the course of this examination. It seems to us that if the witness could be instructed, perhaps, to answer fairly, -- and Dr. Siemore may be sure that he may have a right to answer fairly, but when he goes on to completely collateral subjects and give very long answers which are not responsive to the question, -- for instance, the last question is very clear, and the last answer is not in response to it.

THE PRESIDENT: It is entirely proper under these circumstances to interrupt the witness if he goes beyond the question, and the Tribunal, will be very happy to sustain the interruption. I may say to Counsel, do not assume that this Tribunal is displeased about anything. It will rule on objections as they are made. I think we will try to exercise all of the necessary patience to permit a thorough cross-examination of the witness.

BY MR. NEWMAN:

Q. My next question. Was a community house planned for the district purpose of strengthening the spirit of the common bond the so-called racial German elements of the Borate employees?

DR. SIMERS: Now, your Honor, I believe the witness has not completed the answer, when he was interrupted by Mr. Sprocher, and perhaps Mr. Newman would be kind enough to let the witness his answer, and may I say another word to what Mr. Sprocher said.

If, in cross-examination, one treats matters which have not yet been treated in the direct examination, then I think the Prosecution may not wonder that it is being commented on. But if one asks about Germanization, when there was no word about it in the direct examination, one could not wonder if, considering such a general catch word, the witness then talks about these various social measures and all of these things which he actually did.

THE PRESIDENT: Gentlemen, permit me to observe that the Trial, of course, is strenuous work, and perhaps a bit of refreshment may get us all in a better mood, and we shall come back a little better organized to go along with the completion of the cross-examination.

We arise for our recess.

(Tribunal in recess until 1330 hours.)

AFTERNOON SESSION

(The hearing reconvened at 1330 hours.)

THE MARSHAL: The Tribunal is again in session.

CROSS EXAMINATION (Continued)

MR. W. DUNN

BY MR. HERMAN:

Q. Before I repeat my last question, which is the last one in this connection, I would like to show you Document VI 1197, which is Exhibit 1859. This is a letter before Farben acquired title to the Boruta Plan, January 16, 1941, to the witness and his co-trustees.

Will you please read just the parts I have marked by red pencil?

A. May I read the whole document so that I can inform myself?

Q. This is a lengthy document, and it will do in this connection if you just read the 3 or 4 lines I have marked.

What I have marked for the witness, Your Honors, is the first line of the second page, No. 1, and also the first line of No. 2 of No. 3, and of No. 5.

Just a moment, let me repeat my question.

My question was: Was there a Community House plan in Boruta for the distinct purpose of strengthening of the spirit of common bonds among the so-called racial German elements of the Boruta employees?

A. The Community House was principally intended to be a dining room for the employees. If in some high-sounding language they repeat some phrases in this document, - and that is all I consider this document to be, - then that was the manner of speaking common in the Third Reich, which Farben had to use as well, and which from the standpoint of Farben, was only speaking Four in German.

Q. You testified that the suggestion that I.G. acquired title to the Boruta, originated with the F.T.O. Forsthausstelle Ost and not with I.G. Farben. Is it not a fact that before F.T.O. finally agreed to Farben's getting title to Boruta, Farben repeatedly tried to convince FTO that Farben should acquire title?

A. In the course of the negotiations about the lease, Farben repeatedly expressed the opinion that they would not be able, in the case of a pure lease agreement, to invest their knowledge and their know-how into Boruta. If they were to do that, they would need long-term, clear cut arrangements which would guarantee Farben's investing their know-how in this plant.

Q. That does not quite answer my question. My question was, who took the initiative in Farben's acquiring title to Boruta?

A. I have nothing to add to my statement.

Q. Coming back to the time immediately following the attack on Poland, you were shown, yesterday, a letter by the defendant von Schitteler, to the Reich Ministry of Economics, of September 16, 1939. Is it true that this letter was dictated in your presence?

A. Yes, that is correct.

Q. Turning to Wola, as to the hopeless financial situation to which you testified, in September, 1939, is it not true that Wola, at that time, had a claim against I.G. Farben resulting from the Tri-Partite Agreement?

A. As a member of the Polish group, Wola had this claim against Farben. The leading firm of the Polish group was the Toruta and they were the ones who had the claim. The claim was not against Farben, however, but against the Tri-partite Cartel in which Farben was predominant.

Q. Did you ship supplies confiscated or seized in Wola, to Farben agencies in Poland, through which they were sold?

A. Such sales were effected by the Farben representative in Warsaw on a commission basis only for the Trusteeship Administration of Boruta.

Q. Now as to Winnica, is it not true that the Anthrachinon Plant which was shipped from Winnica to a Farben plant in Germany, was the only one in Poland and one of the three plants of this kind in Europe?

A. The Anthrachinon Plant was not shipped, as such, to Ludwigshafen. Its main part was masonry, fire proof bricks, which remained in the Winnica plant.

Q. The record so shows; you said so this morning. My question just was

It is one of the three plants in all of Europe and the only one in Poland?

A. Yes. It had become superfluous in Poland.

Q. I didn't ask you whether it was superfluous. Was it the only one in Poland? Is your answer yes?

THE PRESIDENT: Now wait a minute. He don't have to say, "yes".

THE WITNESS: Yes.

THE PRESIDENT: Very well.

Go ahead.

BY MR. KEMMAN:

Q. And was it one of the three plants of this kind in Europe?

A. I do not know how many such plants were in Europe.

Q. Did I correctly understand you this morning that the 100,000 Eloty for the "Strachinon Plant" were paid back to Tarban?

A. Not to Tarban, but to Winnick.

Q. Do you know of any individual case since September, 1939, where any compensation was paid to any expropriated Polish or Jewish owner?

A Until I left Poland that was not the case.

Q I have no further questions, Your Honor.

THE PRESIDENT: Any re-direct examination?

Counsel for the Prosecution, to keep our record straight I believe you, during the course of your cross examination, had two documents given numbers of 1257 and 1258, and I'm not sure that you designated whether you are offering the documents or having them marked merely for identification.

MR. NEWMAN: Mr. President, there must be a mistake there are three documents.

THE PRESIDENT: Very well.

MR. NEWMAN: They were 1257 through 1259 and all of them were offered in evidence.

THE PRESIDENT: Very well, the record will so show. Thank you.

RE-DIRECT EXAMINATION (Continued)

BY DR. von KELLER:

Q In connection with the last question of the representative of the Prosecution I should like to ask you for information. What were the regulations governing the compensation to be paid for expropriated property in Poland?

A No final, and not even preliminary, regulations had been issued. The liquidator made all preparations in Beratz, in order to carry out the liquidation according to German regulations, and I already mentioned that in regard to the savings funds he considered them as priority claims. Furthermore, I have learned that the liquidator prepared to call up the shares. Whether this call up was actually carried out I do not know.

Q Do you know that in the first decree which was issued about this confiscation a compensation was provided for?

A I would have to see that decree. I don't know from memory.

Q Was it left up to the individual firms who bought something from Poland, or in Poland, to whom they were going to pay the purchase price

of confiscated property?

A No, that either went to the trusteeship agency in Berlin or, in the area of the Government General, it went to the trustee evaluation agency, the Treuhandverwertungs Stelle Cracow.

Q Another subject, Mr. witness: You have just been asked whether you knew how many concentration plants existed in Europe. I should like you to tell me, for reasons of clarification, whether you have enough technical background to expect you to give such technical information.

A As a business man I do not have such technical background.

Q The next subject is the Boruta. This morning we discussed that there were a certain number of German employees working in Boruta. How were these German employees engaged?

A Schoener and I could not work with the Polish personnel, few of whom knew the German language sufficiently, because we had a flood of regulations and prescriptions. They were all clothed in the language of "you have to answer this by a certain deadline," and we could not cope with all that. For that reason I asked Farben for assistance which they granted me.

Q Did this request emanate from you or from Farben?

A From me personally because we could not do our work properly. In Lodz we were told "You are being asked to board a train which is running at full speed."

Q Would you have been able to get similar technical assistance from some other agency?

A No.

Q The last subject: Himmler's name was mentioned previously— do you know any relations between the Defendant von Schatzler and Himmler?

A No.

Q Did you personally, Mr. Schwab have any relations with high Party functionaries in Poland or with leading SS persons?

A No, I did neither know Greiser, nor Frank, the Governor General of Poland—that is, I was introduced to these gentlemen, but I did not ask

their acquaintance otherwise. My acquaintance in the highest position was the Regierungspräsident in Lodz, otherwise only the Kreishauptleute.

Q Were these people Party functionaries, or were they in the Government?

A They were Party people in government functions.

Q I have no further questions.

BY JUDGE MORRIS: Are there any more questions on the part of counsel?

If not, I would like to inquire of the witness:

Q With whom in Farben did you negotiate in order to obtain the Boruta loans you have told us about?

A I didn't understand the question, Your Honor.

Q With what individuals in the Farben organization did you negotiate when you obtained the Boruta loans that you have testified about?

A I only talked with Dr. von Schnitzler about it—that is, I wrote to him and his adjutant Mr. Eckert.

Q Would you say that the loans that Farben made to you as trustee of Boruta were made by Farben entirely on a voluntary basis?

A Yes, there was no legal basis of any other nature.

Q And the request for the loan was made by you entirely as your own idea and not under the suggestion of any Reich Government official?

A It was my own cry for help. No government official suggested it. They could not help me.

Q When the purchase was made by Farben of the Boruta property—that is, real estate, the plant, and the stock-piles—would you say that that purchase was made voluntarily upon the part of Farben, or was that made under some governmental pressure?

A No, no pressure on the part of the Government. It was a voluntary resolution of Farben to save these plants from destruction or to protect them against falling into the hands of speculators.

Q Thank you; that's all of my questions.

THE PRESIDENT: Are there any other questions that any of counsel desire to ask this witness? Since none is requested the Tribunal will excuse the

witness from further attendance.

DR. SIEMERS: Your Honors, after having examined these witnesses I have two or perhaps three more witnesses, as the Tribunal knows already from the discussions, who are not available at the present, for the reasons of which the Tribunal has already been informed. The Tribunal was kind enough to grant me permission to call witnesses at a later time to be appointed. At this moment, therefore, I have no further evidence to present and, therefore, I temporarily rest my case on behalf of Dr. von Schriteler.

THE PRESIDENT: Dr. Nolte, are you ready to proceed?

DR. NOLTE: Dr. Nolte for the Defendant Hoerlein. Mr. President, Your Honors, may I be permitted that I begin presentation of my evidence in the case of the Defendant Professor Hoerlein?

At the beginning of my evidence I should like to call the defendant into the witness box, and I should like to have you direct that this be done.

THE PRESIDENT: The Defendant Hoerlein may leave the dock and take the witness-stand.

HEINRICH HOERLEIN, a witness, took the stand and testified as follows:

For the record will the defendant please raise his right hand, say "I," and state his name.

WITNESS HOERLEIN: I, Heinrich Hoerlein.

THE PRESIDENT: Now please repeat after me the oath: ...swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing." (THE WITNESS REPEATED THE OATH)

The witness may be seated.

DIRECT EXAMINATION

BY DR. NOLTE:

Q Please, for the record, give your full name.

A Heinrich Hoerlein.

Q How old are you?

A. Sixty-five years old.

Q. How long have you been living in Elberfeld?

A. Since the 1st of January 1909.

Q. That is from your 25th year?

A. Since my 26th year.

Q. How did you get to Elberfeld?

A. By reason of a conference with Professor Duisberg and with my well-respected Professor Knorr, who was my teacher in 1908. In December of 1903 I had graduated with Professor Knorr in Jena. Knorr was the inventor of the Salipirin and thereby the founder of the modern synthesis of Pharmaceuticals. On the 1st of January 1904 I became his assistant and collaborator in the study of morphine. This work took five years and resulted in about twenty scientific papers that were published. This drew Professor Duisberg's attention to me, and he engaged me for the Pharmaceutical Department in Elberfeld.

Q. It is unusual that you should never have worked in any other plant. How do you explain that?

A. I was very fortunate to have found a really ideal place in Elberfeld for the work that I had desired for my life's content. That was to work in the field of synthetic pharmaceutical research and to help suffering humanity by doing this work. I found in Professor Duisberg a benevolent and congenial superior who promoted my projects, who entrusted me, after two years already, with directing the scientific laboratories, and who led me along the right road with his advice. There were offers and possibilities in Leverkusen and abroad, but I rejected them because the Elberfeld plant, which I had organized for pharmaceutical production seemed to me every year more and more as my life's work. During my second trip to America in 1932 Dr. Weiss, the Director of the Bayer Company, New York and Albany, was discussing the uncertain situation in Germany, and he suggested to me in the case of a revolution that I should take care of the scientific work in this American organization. However,

I could not decide to desert my work and my country for two reasons:
First, on the 1st of April 1932 we had discovered /tebrine as a cure
against malaria. This disease is one of the great problems confronting
humanity, since one-third of living humanity is suffering from malaria,
and every year many millions of humans die from this sickness. Further-
more, on the 24th of December 1932 we had taken out the first patent for
sulfoxenide. Because of this late and because of the significance which
the sulfa drugs had gained in medicine, I considered it as a gift of
Fayden to humanity.

The second reason why I stayed in Germany was my resolution to take
up the fight for freedom of science.

Q. What is the peculiarity of the Elberfeld plant which you directed among the many plants of Farben?

A. Elberfeld is the germ from which the Farben plants formerly Friedrich Bayer and Company developed. With the development and extension of the Leverkusen plant, the intermediate plants, and the dye-stuffs plants, which were in Elberfeld, were transferred to Leverkusen so that, in the course of time Elberfeld retained the character of a purely pharmaceutical production and research station. My special interest I devoted to the development of the research station. My idea was to effect close cooperation, within the Elberfeld plant, of the chemists with modern experimental medicine.

Q. How did you realize your idea?

A. When I entered my service in 1909 in Elberfeld I found only very modest conditions in the laboratory for chemical and pharmacological experiments. When the dye-stuffs laboratories were transferred to Leverkusen in 1912 we had more room for a larger number of chemists. I modernized the chemical laboratories, and I arranged, in the course of years, for new institutes for pharmacology, bacteriology, chemo-therapy, experimental pathology, physiology, and physiological chemistry. In 1932 we added an institute for industrial hygiene serving all of Farben.

Q. The branches of science listed by you constitute really the branches of a medical faculty, don't they?

A. Yes, the theoretical branches.

Q. Did you and the directors of the research stations have close connection with the scientific and university circles in your activity?

A. The directors of all of these institutes, just as I myself, belonged to the teaching staff of one of the neighboring universities. That was the University in Bonn, in Cologne, in Muenster; it has the medical academy in Duesseldorf.

The circle in Elberfeld was, therefore, more or less academic in nature.

Q. What were the remedies discovered in Elberfeld which found

the world renown of Bayer and Elberfeld?

A. I can only give you a few names from memory here. Of the older products I should only like to list Aspirin, Phenacetin, and luminal. Of the newer type products Bayer 205, sulfa drugs, and Atabrine.

Q. Bayer 205 is the remedy against sleeping sickness?

A. Yes, against the African sleeping sickness.

Q. Luminal was your discovery?

A. Yes, that was my first pharmaceutical discovery, which I found during my first year in Elberfeld. Still today it is the favorite remedy in the case of epilepsy, and during those more than 35 years in which it has been used it has cured hundreds of thousands of epileptics by preventing their fits.

Q. How did it come about that since those 40 years you were considered everywhere as the director of the Elberfeld plant and that you were spoken of in the highest esteem, but that no more discoveries were made in your name?

A. At the moment when I took over pharmaceutical direction of the Elberfeld plant Professor Duisberg advised me not to register any more patents or discoveries under my own name, but to leave this to my associate researchers. This would give me a chance to express to those subordinates that I was not doing my work for reasons of personal ambition alone. I considered this advice correct and acted accordingly; and this gained me the confidence of all my subordinate associates and retained it.

Q. In your capacity as director of the Elberfeld plants and with in Farben were you a researcher and a scientist principally, or were you the director of the plant in the business sense?

A. My inclination was towards science and research. The fundamental difference between a scientific worker and a businessman -- if I am able to judge this correctly -- is the following: The businessman looks towards the monetary profit, and has to do so; the nature of a researcher and a scientist, however, is the accomplishment of a task of which he does

not know from the beginning whether or not it would result in a financial profit. I did not receive any instructions to carry on research in Elberfeld under the aspect of monetary profit; therefore, I did not make any petty prescriptions for my associates, but I permitted them to work freely. It was fortunate for all concerned who were able to work in this way, and it was fortunate for humanity which profited most from this policy, that Farben even permitted such a magnanimous policy and that it actually carried out such a policy.

From the very beginning I had an unlimited budget for scientific research. The fact that this business policy, which was by no means capitalistic, did achieve a success is to be accounted to the benefit of my associates who worked very industriously and by using all the powers at their command.

Q. Did Farben carry out this policy and attitude only in their own plants?

A. No, Farben promoted general research on a larger scale, especially in the chemical and scientific fields. In this connection may I point to the table of positions which you can find in Book 87, page 14?

DR. WHITE: Mr. President, this is on page 72 of the English, and a supplement belonging to this, is in Book 66, NI 10166, Exhibit 1616; in Book 66, on page 14.

Q. Would you please explain what you have to say with the aid of this chart?

A. Yes, under Paragraph 9 it states, that I was the President of the Justus Liebig Association on Promotion of Chemical Instruction from 1935 to 1945. Under Para. 10 it says, that I was Treasurer of the Kaiser Wilhelm Association for the Promotion of Sciences. It says here "Chemical Sciences," but it should say "The Sciences." Under Para. 11 it says, that I was Treasurer of the German Chemical Association from 1936 to 1945. Para. 21 says, that I was a member of the Senate of the Kaiser Wilhelm Association for the Promotion of Science from 1937 to 1945. Para. 22 states, that I was Treasurer of the Adolf Beyer Co. for the Production of Chemical Literature from 1937 to 1945. Para. 23 states, that I was Treasurer of the Emil Fischer Company for the Promotion of Chemical Research from 1935 to 1945, and Para. 24 states, that I was Treasurer of the Association of German Natural Scientists and Physicians from 1932 to 1945. This corresponds to the American Association, a society for the advancement of science. In all these positions I represented Farben, and from my own knowledge I know how large the field was which Farben had in the maintenance of a free scientific research and in the promotion of an independent young trained scientific staff.

DR. NELTE: Mr. President, in this connection and to prove the point discussed last, I offer several affidavits of the Nobel Prize Winners, Professor Windaus, Professor Hahn and Professor Wieland. These are the affidavits listed in the Document Book Hoerlein 105 and 115. They are numbered 36 and 37. They are identical with the documents presented by my brother, Rudolf Dix, for Schmitz, Nos. 41 and 42. These affidavits were submitted by my brother, Dr. Dix, to the Tribunal and were explained and commented on at the time. Therefore, I need no further comment on my own to the significance of these affidavits of the world famous Nobel Prize Winners and Research Men. It will not escape your attention, I am sure, that in these affidavits the name of the defendant, Professor Hoerlein, is mentioned with especially great honor in connection with the promotion of independent science and the protection of those scientists and scholars persecuted for political and racial reasons.

May I ask these documents be accepted as Exhibit Hoerlein Nos. 3 and 4? I ask that you please note that I wish to correct the description in the index of Volume I to the effect that the words in No. 36, "Especially the Pharmaceutical Branch" should be crossed out.

THE PRESIDENT: Dr. Nelte, are the documents which you desire to be numbered as your Exhibits No. 3 and No. 4 in your Document Book I, or are you just — I am sorry. I have sent for my Book I, as I do not have it. Just permit me to say this, that it will not be necessary to burden the record a second time with respect to a document that is already in evidence. You may simply state on the record that you wish to have the document in evidence considered as a part of this case and then cite the document, so that its identity will appear from the transcript. If you have processed these documents we have no particular objection to you offering them again, but really after all it is unnecessary. I am sorry. I have sent for Book I Hoerlein. I didn't have it, and I will have it here in a moment. I was just a little in the dark as to what the situation was with respect to the two documents, Nos. 3 and 4 about which you are now speaking.

DR. NELTE: Judge Merrill informed me yesterday that Document Books I and II, in the English language, were before the Tribunal.

THE PRESIDENT: Unfortunately I left my Book I in the office, and have sent for it. I did have it yesterday. I made a mistake and picked up the wrong book. The same situation, Judge Morris tells me, relates to him, so if the Secretary will have his Book I brought in we will be in a situation to go ahead in just a moment. Will the messenger please get Judge Morris' book now?

MR. SPEECHER: Mr. President!

THE PRESIDENT: Yes, Mr. Prosecutor.

MR. SPEECHER: In the Exhibit which Dr. Nelte proposes to hand to the Secretary it is noted at the top of each exhibit in each case that the document, the affidavit is identical in the first instance with Schmitz Document 41, and in the second case with Schmitz Document 42. Now, that would mean that two identical documents would be introduced with different types of exhibit numbers, one in the case of Schmitz and one in the case of Hoerlein. I can quite understand that in some cases Dr. Nelte might want to reproduce the document again, but wouldn't it be more simple if he didn't have a separate Hoerlein exhibit number given, because it would save having duplicate files in the Secretary General's office.

THE PRESIDENT: May I ask Dr. Nelte, will it occur several times or will there just be a few instances of that, do you think?

DR. NELTE: It will be only in a few cases, and only where Professor Hoerlein's name is mentioned in these documents.

THE PRESIDENT: I believe it would be better to allow you to have the document bear your own number, because in making up office records and things of that sort it would be less confusing, even though it does slightly overburden the Secretary's record. May I inquire of counsel generally, if any of you think there will be any great number of documents offered at a second or subsequent time; do any of you have any idea, will that be voluminous or will it be a comparative sure thing? The indications to the Tribunal are it will not occur often, and I believe under the circumstances it will be less confusing to all concerned to allow you to give it

your own number, notwithstanding the fact that it bears another number.

Now, to get back to the record, you have identified Nos. 3 and 4.
Now, may I ask your document 36, does that have Exhibit No. 3?

DR. NELTE: Yes, Your Honor. Document Hoerlein 36 will be Exhibit 3, and Document Hoerlein No. 37 will bear Exhibit No. 4.

THE PRESIDENT: Very well. It will be so on the record.

JUDGE HERBERT: Mr. President, may I make one brief comment? It may not be necessary, but I want to make it so we will have no misunderstanding on the part of counsel for the defense. That is when any document for the Defense is introduced in evidence by counsel for one defendant, insofar as the Tribunal is concerned that document is in evidence in favor of all of the defendants, whether it bears the denomination of Schmitz exhibit, or whether it is in the name of another defendant, so that there is no necessity for duplicating these documents in the second document books.

THE PRESIDENT: That is correct, and is a good supplementation of what we are trying to work out here. We are making what might be called an exception to it in this instance, because you do have the documents in your own document book, otherwise the index might appear to confuse someone. I think now, Dr. Nelte, we understood ourselves sufficiently, you may go along.

BY DR. NELTE:

Q. Under Count I of the indictment you, together with all the other defendants are charged with planning the war and aggression of other countries; in this connection, and in compliance with the suggestion of the Tribunal, I first submit an Affidavit, Hoerlein Document 43, Document Book I. In this affidavit Professor Hoerlein clarifies his functions as a member of the Vorstand, the Central Committee, and the Technical Committee, and he speaks about his function within the Pharmaceutical Branch of Sparte II.

THE PRESIDENT: That will bear Exhibit No. 5, Dr. Helte?

DR. HELTE: Yes, Your Honor, No. 5. I shall not read anything from this document. If necessary I will ask a few questions from Professor Hoerlein for clarification.

Q. Since when have you been a member of the Vorstand of Farben?

A. Since January 1, 1931, as a regular Vorstand member.

Q. How many members does the entire Vorstand consist of in the individual years?

A. During the merger of Farben in 1925 there were I think 80 people, of whom 25 or 28 formed a working committee. Since 1938 there have been approximately 24 Vorstand members.

Q. How often did a Vorstand meeting take place in these years?

A. Seven or eight times.

Q. In one year?

A. Annually.

Q. Was the agenda sent along when people were invited to participate in the meetings?

A. The invitation was sent out before and the agenda shortly before the meeting.

Q. Were any minutes or records about the results or conduct of the meeting sent to the individual members?

A. No.

Q. How long did these Vorstand meetings usually last?

A. Usually on one morning from 10:00 until 14:00, and if necessary a few hours in the afternoon, but not regularly, only in exceptional cases.

Q. What happened at such a Vorstand meeting?

A. This is very clearly described in Dr. Ter Meer's statement in Document Ter Meer NI 5184, Exhibit 330, Document Book 12, under No. 8 and following. This description corresponds to the truth and I can confirm this completely.

DR. MILTZ: Mr. President, this is the Ter Meer document which is to be found on page 91 of the English Document Book Exhibit 330.

Q. Were the individual points of the agenda formally voted on?

A. No.

Q. Were the individual Sparten and branches of Farben proportionally represented in the Vorstand?

A. Yes.

Q. Did you represent a certain branch in the Vorstand?

A. Together with Mann and Lauten Schlegel I represented the Pharmaceutical Branch of Farben, especially I myself represented the Pharmaceutical Plants and Laboratories in Elberfeld and Leverkusen.

Q. You are speaking a little too quickly. Who reported about the Pharmaceutical Branch in the Vorstand meetings?

A. Mann reported about the commercial questions, Lauten Schlegel and I about the Scientific affairs of our plants. Lauten Schlegel in the case of Leverkusen and I in the case of Elberfeld.

Q. In 1932 was the question of attitude to the National Socialists discussed in the Vorstand principally?

A. Not principally. In the course of occasional remarks the attitude of Bosch was negative and Dalsberg. He did not hide his antagonistic feelings and many other gentlemen acted the same way.

Q. Was it ever discussed that one should make an agreement with Hitler for the purpose that he might assume control of the Government?

A. Never, never.

Q. Was it reported during a Vorstand meeting that on the 20 of February 1933 a meeting had taken place with Goering where Hitler explained his program?

A. As far as I know that was not done.

Q. You know the Document Book 3, page 62 of the English and page 64?

A. Yes.

Q. Was the contribution of 400,000 marks for the Hitler election fund ever discussed, or was the matter the subject of resolution in the

Central Committee or in the the Vorstand?

A. No.

Q. Do you know the plan of the Reich Association of German Industry in which the German industry was to be oriented along the Fuehrer line, which is mentioned on page 32 of Trial Brief I, did you know about that?

A. No, I only learned this at a later time.

Q. What was the attitude of the then Vorstand in its entirety towards Hitler and the National Socialists?

A. Generally negative.

Q. What was the Vorstand's attitude to the Jewish problem?

A. In 1933 the Aufsichtsrat had six Jewish members of whom, Geheimrat Gans fled within the next year, and Herr Marten emigrated to England. Then there remained four members of the Aufsichtsrat in 1936, when the new stock corporation law made membership of these gentlemen impossible. The attitude of the entire Vorstand was antagonistic toward the anti-Semitic tendencies of the Party.

Q. Did this correspond to your personal opinion?

A. Yes.

DR. MALTZ: Mr. President, to corroborate this very simple "yes" I do not wish to ask any more questions of Professor Geerdien, but to submit you five affidavits. They are affidavits of five eminent scholarly scientists, four of whom are living in the United States and who have become American citizens, and one of whom is living in Jerusalem. I offer Document Geerdien No. 35 on page 46 of the Document book. Mr. President, I must ask your indulgence. These five affidavits are not in Document Book I, but in Document Book V, which is not yet before your Honors. I ask your permission to offer them already now in this connection. As long as we don't have the English translation would you please accept them for identification only, so that we can have them in continuity?

THE PRESIDENT: Is there any objection on the part of the Prosecution as to this procedure?

MR. SPRECHER: Mr. President, I suggest they go into evidence, then if we have any objection we will take the initiative and if there is no objection we won't have to bother about it.

THE PRESIDENT: Dr. Helte, give the document number of the first one and the exhibit number you wish it to bear.

DR. HELTE: The first is Hoerlein Document 35, Volume V, page 46. I offer it as Exhibit 6.

THE PRESIDENT: Very well. Go on through them all in the same way and we will have our record straight.

DR. HELTE: May I mention the name of the affiant, as you may see it from the record? This is the affidavit of Professor Rudolf Hoerber, University of Pennsylvania. He says, "After having been dismissed from my position in 1933 as professor ordinarius at the University of Kiel, Professor Hoerlein supported my work at the University of Pennsylvania, and the formal conduct of my year-long research, by sending me proper materials. In the spring and summer of 1935, Professor Hoerlein had definite dye-stuffs produced for me, which were very valuable for me, and without which I could not have solved the problems that I had to take care of."

The second document is Hoorlein No. 12 in Volume V on page 39. It is an affidavit of Dr. Gerhard Hecht Elberfeld, containing a letter of Professor Zundek which is appended to this affidavit and in which Professor Zundek says:

"I should like to emphasize especially that Professor Hoorlein after I was forced to leave Germany in 1939, endeavored to maintain his friendly relations for me although this may have become dangerous for him."

I ask that this document be accepted as Exhibit No. 7.

The third document of this type is Hoorlein Document No. 11 contained in Volume V on page 26. It is offered as Exhibit No. 6. It is an affidavit of Professor Paul Cydery, at present at the University of Pennsylvania. He says that during his very extensive collaboration with Professor Hoorlein the latter was never motivated by business reasons, but always endeavored to reach a higher scientific level, characteristic for his deep scientific thought and his noble character was the history of the sulphur drugs. He says:

"Professor Hoorlein was entirely motivated by his work and was not interested in politics. On a few occasions Professor Hoorlein demonstrated that he was a liberal democratic person."

In 1937 Professor Cydery saw Professor Hoorlein in Cologne and says that he, Professor Hoorlein, was very distressed about the future because of the policy of the National Socialist government.

The next document is an affidavit of Dr. Erich Danniger, Hoorlein Document No. 12 in Volume V on page 45. Danniger who at present is in New Jersey says that he knows Professor Hoorlein since 1916, that he was a long collaborator with him in Elberfeld and through recommendation and support of Professor Hoorlein he became an associate of the Wintrop Chemical Company, Albany, where he still is today.

I ask that this document be accepted as Exhibit No. 9.

The last document of this type is Hoorlein No. 11 contained in Book V on page 44.

It is the affidavit of a Dr. Tannhauser in Boston. He says:

" Professor Hoorlein is a man of very democratic nature. In 1939 I had the impression that he had remained the same as I had known him previously and was not tainted politically by the Hitler prison."

I ask that this document be accepted as Exhibit 10 for Professor Hoorlein.

Q Professor, was the circular mentioned on page 33 of Trial Brief No. 1 discussed at Vorstand? This is the same document as is to be found on page 4, page 80 of the English, under Document HI-1091, which bears exhibit H - 63. Do you know this document?

A I looked at it already. It is not, as it is stated in the trial brief, a circular directed to all Farben plants but a letter of four lines which Ivershusen sent to a Dr. Wahl. In the trial brief the incorrect document book number is indicated. In the trial brief it says "III". It should be No. "IV".

Q Did the Vorstand discuss this suggestion of the foreign Farben representatives mentioned on page 32 of the trial brief, to take influence on mitigating the anti-semitic policy?

A I do not remember that. According to the contents, this is an affair which was discussed in the Commercial Committee.

Q Were you a member of the Reichsgruppe Industry?

A No.

Q Did you belong to the Economic Group, Wirtschaftsgruppe Chemie, or to a subordinate branch of the Economic Group, Wirtschaftsgruppe Chemie?

A Neither to the Economic Group Chemie nor to any subordinate group nor to any other organization of industry.

Q What did you know about the plans mentioned on page 86 of Trial Brief Part 1, about the defense of the Farben installations against air raids, page 6? Do you have that?

A Yes. I knew these plans and I believe these were precautionary

measures which were taken everywhere in the world and which are quite common and a matter of course.

Q On page 86 of the trial brief in front of you, Part 1, a meeting of the directors of the Bayer plant is mentioned to have taken place in 1934.

DR. HULTZ: Mr. President, this is the Prosecution's Document No. 738, NI-8429, on page 31 of the English and page 119 of the German Book XLIV.

Q Professor, did you participate in this meeting?

A No.

JUDGE WARREN: Exhibit Number, counsel? The translation -- what exhibit number now?

DR. HULTZ: Exhibit No. 783.

JUDGE WARREN: That is right.

BY DR. HULTZ:

Q Did the Vorstand discuss a cooperation of Farben of Farben with the Wehrmacht?

A No.

Q At the end of 1935 the Vermittlungsstelle W was instituted in Berlin. The document Exhibit 101, NI-4702, in Document Book 5 of the Prosecution, on page 82 of the German and page 80 of the English, treat this subject; furthermore, Exhibit 99, NI-2747, Document Book V, page 79, of the German and page 77 of the English. What did you know about this Vermittlungsstelle W?

A I know, of course, that this Vermittlungsstelle W existed. In my opinion, it was what its name signifies. It was an agency for mediation and simplifying understanding between the Farben plants which had some business with the Supreme Reich authorities and the Wehrmacht agencies and vice-versa.

Furthermore, this agency was supposed to interpret the general regulations issued by the supreme authorities and which affected the Farben plants and was supposed to turn them over to the plants.

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Q What relation existed between your plants in Elberfeld and the
Vermittlungsstelle W?

A We only had a few minor points of contact, business matters with
the highest medical authorities of the army and of the Reich, as, for
instance, the Reich Health Authority. They were taken care of by us
directly. We received circulars of the Vermittlungsstelle W which
were sent to all plants.

Q In this connection the Trial Brief, Part I, on page 70,
speaks about mobilization plans and of your personal participation in
preparation of mobilization plans. I refer to Exhibit No. 198, 199
and 200 in Book VIII, page 20 of the German and pages 23 and 30, and
pages 25, 27 and 30 of the English. What have you to say on this?

A We had a little to do with these plans because the pharmaceutical
plants had to remain in actual operation in case of war.

THE PRESIDENT: Dr. Helte, we will take our recess at this time.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PROSECUTOR: You may continue.

BY DR. MELTZ:

Q Professor, we had just talked about the connections between the Vermittlungsstelle W and your plant Elberfeld. In this connection I ask you, did you sign an affidavit about the Vermittlungsstelle W according to which you were familiar with the regulations about the War Economy and that you obligated yourself to keep them secret?

A I do not recall that, but I would like to say that whatever considered secret had to be kept secret, and the obligation of keeping all these matters secret corresponds to the laws since 1933 and probably are valid everywhere in the world.

Q In Document Back 19, page 129, English book page 93, there is a memorandum from Hitler to Goering of July 1936. Did you hear about this memorandum and its contents?

A No, I did not.

Q This memorandum concerns the Four Year Plan. Was the Elberfeld Plant affected by the Four Year Plan?

A No, the pharmaceutical industry was not included in the Four Year Plan.

Q Please look at Part I of the Trial brief, page 92. You see there as the heading of this chapter "1937 to 1939." In the year 1937 the same page shows nomination of leaders of the War Economy. On page 93 it says: "The defendants Krauch and Schmitz became leaders in the War Economy in 1939 and subsequently Gajewski, Schnitzler, Ter Meer, and Hoorlein were also appointed in this capacity." When were you appointed as leader in the War Economy?

A I was appointed War Economy Leader in the year 1941. This appointment came from the Ministry of Economics, because of the importance of the medications manufactured and invented at Elberfeld -- that is to say not by the Army.

THE MARSHAL: The Tribunal is again in session.

THE PROSECUTOR: You may continue.

BY DR. NEITE:

Q Professor, we had just talked about the connections between the Vermittlungsstelle W and your plant Elberfeld. In this connection I ask you, did you sign an affidavit about the Vermittlungsstelle W according to which you were familiar with the regulations about the War Economy and that you obligated yourself to keep them secret?

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Q And not in the period which is listed as the heading in this part of the trial brief?

A No, it was not in the year 1941.

Q Did you, in this capacity, as War Economy Leader, have any special mission which had any reference to the war?

A No, no type of task.

Q What knowledge did you have about the entire development of Farben since the year 1933?

A My knowledge was based on the reports of the Vorstand meetings and the TFA meetings.

Q How did you judge the obviously favorable development of Farben since 1933?

A In the years between the two world wars the results of research during the past ten to twenty years in the chemical field had come up to the level of manufacture. This is true of gasoline, of nitrogen, of buna, of light metals, of synthetic products, but also for pharmaceutical products, because in the pharmaceutical field, too, there was the same story development. In 1909 Ehrlich had invented salvarsan. A few years later there were the first reports about the existence of the vitamins. After the first world war we heard about the production of insulin in Toronto by Bunting and Best. In 1922 Mc Callum in Baltimore developed a rat test for rickets which was followed the Vitamin D experiments of Stahlbrock in Madison, Wisconsin and Dr. Hess of Columbia University in New York City. On this basis and in agreement and in cooperation with these American gentlemen, we invented the Vigantol together with Windaus. Furthermore we developed malaria medicines and other chemical and therapeutical products in Elberfeld. We synthesized Vitamin B₁₂ which is known in America as thiamine, and so forth.

Q Did these large scale projects lead to an expansion of the installations and did they lead to general discussions in the Vorstand about the sense and aim of these expansions?

A I can answer this question definitively with no. The peace program proclaimed and propagandized by Hitler allowed free economic development in all fields.

Q Did you personally have no misgivings that this development might lead to war?

A No.

Q The Prosecution claims that it was the intention of Hitler to go to war could have been seen from the extent of the armaments and of these projects. I must ask you in this connection what about your plant and about the pharmaceutical branch of Farben in general?

A The pharmaceutical branch of Farben did not participate at all in this rearmament in Germany. The turn-over figures of the years 1933 to 1938 prove this.

DR. MULLER: Mr. President, concerning this point I submit Heerlein Document 115 in Book No. 9. I hear that this document, which consists of four pages, is incomplete in the English document book. These are statistical charts about the developments of the pharmaceutical branch, the contents of which have been sworn to by Dr. Sels.

I offer these four pages in the original, and in case the other pages are missing in your copies I shall see to it that your document books are completed. This statistical material is offered by me as Heerlein Exhibit No. 11. It shows that the turn-over, up to the year 1939, was absolutely normal and was in no way influenced by army orders.
BY DR. MULLER:

Q Professor, did you that is to say the pharmaceutical branch, experience any advantages or support by the government of Hitler?

A No, since 1933 we had a severe struggle with the Party agencies supported by Hitler and Goering.

Q In what field was that?

A The particularly anti-Semitic circles around Streicher, the Nurnberg Gauleiter fought Farben since they considered them as allies of the Jews because it was known that Farben did not want to dismiss, and did not dismiss the Jewish members of the Aufsichtsrat. For this purpose, one used the adherents of Homeopathy, led by Hess and Streicher, and defamed the pharmaceutical branch of Farben by means of pamphlets and caricatures which designated Farben as Jewish Capitalist corrupt as people.

DR. MULLER: I hear, Your Honor, that the interpreter has not understood correctly, but of course I cannot determine in what respect the translation was not correctAs I have been informed, the translation was properly corrected. I shall check the transcript later.

In order to prove these statements of Dr. Heerlein's, I shall submit Heerlein documents Nos 52, 53, 54 and 55, which are in Book I, from page 45. Since these journals and caricature are offered in the German language, -- something like that cannot be translated --. I have added an explanation which is attached to the English document book. I would only like to add the following about this because it is impossible even to read only excerpts from all these documents. These documents prove the antagonism between certain very influential persons of the Party and Farben, especially of the pharmaceutical branch.

The title page to the first document is headed "Stop the Thief." It describes the Stockholder as a representative Jewish influence of medicine to whom the representatives of science are subservient, whilst he -- the stockholder -- stamps his foot down on the neck of homeopathies.

Since I realized, your Honor that this type of translation is very difficult, I gave the interpreters two copies of this part, so they can translate what is before him.

THE PRESIDENT: We will be off the record for a moment until we get straightened out.

DR. NEALE: I am not sure, but what maybe the confusion is a little broader than you think. I noticed you have in your hand what purports to be some photostats of some publication of a smoking. Now, these are not in our books either. Were you under the impression that these were in our books?

DR. NEALE: Yes. It is contained in the copies of the English books. Unfortunately it is not in the German books.

THE PRESIDENT: They are not in my books.

DR. STICKLER: Mr. President, I can cast a little light on this matter.

THE PRESIDENT: Very well, we will be glad to hear from you.

MR. SPITZBERG: It is not possible to reproduce photostatic copies of something as extensive as this in the usual way, and that was understood as I understood it at the time this special problem came up. On the part of the Prosecution, I stated that we would be very glad to get a limited number of copies with the full text and for the rest we would have to get along without them. As I understand it, possibly the wrong copies were delivered to your Honors, who I am sure were entitled to have the full copies.

THE PRESIDENT: I just verified the fact that our books do not contain these photostats, and I suspect maybe that is where the trouble is with the Interpreter; perhaps his book is like yours and you are talking about something that he can't find. He will permit you, however, to supply such omissions as you think are proper without burdening you too much. Can you go along in the presentation of the documentation, in the light of the situation?

MR. WOLFE: It is possible, but I can offer the original and another copy to the Court.

THE PRESIDENT: That would be very well, and then we can look at it as you make presentation, and the omissions may be supplied later if necessary.

DR. NELTZ: Then I may continue my comments about these documents. Mr. Sprecher requests that I give the numbers of the documents which have been offered in their order, and I offer now Hoerlein Document Number 52 as Exhibit 12, Hoerlein Document Number 53 as Exhibit 13, Hoerlein Document Number 54 as Exhibit 14, and Hoerlein Document Number 55 as Exhibit 15. These documents, and I repeat once more, prove the antagonism of certain very influential members of the Party to I.G., especially to the pharmaceutical branch of I.G. The title page shows the slogan "Catch the thief," and represents the shareholder as a representative of the "medicine influenced by Jews," to whom the representatives of science are subservient while he, the stockholder, puts his foot on the neck of homoeopathy. And this shareholder, in a disgraceable caricature is, as you can see on page 2, "Isidor G. Farber" -- that is, I.G. Farben. On page 4 you will find a caricature of the famous Professor Behring, who founded the Behring plants at Marburg. The leading article bears the headline, "Vaccination is ritual murder." These attacks, directed against Farben, were instigated by the intransigent representatives of homoeopathy, Hess the deputy of Hitler, Streicher, the omnipotent Gauleiter of Franconia, at Nurnberg. The pamphlets and caricatures show a hateful opposition of powerful members of the Party to Farben and especially to the pharmaceutical and medical branch. Professor Hoerlein fought against them as is apparent from the following documents dealing with the fight of the Party against vivisection.

THE PRESIDENT: Dr. Nelte, in the confusion over the books, I may have overlooked something that you said, and I should like to get it straight in my mind. What have you to say about this publication? Who published this and what was the source of this magazine or publication?

DR. NELTZ: These are periodicals which were published by the Nazi Party officially between the years 1933 and 1934. The notorious Streicher of Nurnberg was the publisher.

MR. SPRAGUE: Mr. President, we have no objection to this type of document, a contemporaneous document of the Nazi era, but we do object to its description as a Nazi publication. Dr. Helte has pointed out that it has a Swastika up in the corner, but it was published by Streicher's own agency in Nurnberg. It is also true that Streicher was the Gauleiter of Franconia with his headquarters here in Nurnberg, to which we stipulate.

THE PRESIDENT: Well, it was for the purpose of my inquiry anyway, and only insofar as the Prosecution may differ from Dr. Helte, you are not bound by his statements.

DR. HELTE: Vivisection, of which I just spoke, is compared to a Jewish ritual killing. On page 1-1 in a report of a session in the Prussian Minister of the Interior, Professor Hoerlein is attacked in a hateful manner. On page 13 and 14 there is a report of an SS physician, Dr. Bokhard, in Hannover concerning the same session, in which Professor Hoerlein stated the point of view of science contrary to the radical requirements of the anti-septic vivisectionists as is described in the affidavit of Dr. Giese, which is yet to be submitted. It may be pointed out that the personal attacks which are in this article are directed against Dr. Hoerlein, and I quote, "Who at the time of the Marxist Government got the honorary doctor's decree". And who in this session — and I quote again — "in so warm a manner exposed himself in favor of the Jewish Professor Rosenfeld?" These two facts are correct.

In this connection, I further offer Hoerlein Document Number 16, which is to become Exhibit 16. This is an affidavit of Dr. Giese, who knew about the attitude and philosophy of Dr. Hoerlein against the absolute prohibition of vivisection and who also knew about Hoerlein's attitude towards the Nazi Party. Furthermore, I offer Hoerlein Document Number 56 as Exhibit Number 17. This is the article by Norman Kirk, "Race or Men," and in case there are any misgivings about the relevance of this expert opinion of this high ranking Surgeon General of the U.S. Army, I shall offer this document as Exhibit Hoerlein Number 17 for

identification.

THE PRESIDENT: It isn't a particularly serious circumstances. Perhaps my associates books are complete. We are just checking. I do not have that document in my book. At least it is not at the place where it should be. The paging in my book jumps from 68 to 71. I just call that to your attention, Dr. Nelte.

DR. NELTE: Your Honor, it is supposed to be on page 69.

THE PRESIDENT: There is no 69 in my book.

JUDGE MORRIS: Mine either.

THE PRESIDENT: Judge Morris tells me also that his is defective.

MR. SPEECHER: Dr. Nelte wanted to have the pictures that go in this magazine article by Norman Kirk as well, I presume, so he asked for photostats, which again makes for the limitation I described before.

THE PRESIDENT: That very well explains the situation then, because there are no photostats in this book.

MR. SPEECHER: Mr. President, may we ask Dr. Nelte to give a short description for the reason of this article by Norman Kirk on vivisection?

DR. NELTE: Your Honor, the possibility could exist that one might be an opponent of vivisection. I could imagine that there might be fine but very soft people who are adherents of anti-vivisection. In order to bring proof that the point of view represented by Professor Howland in his struggle against the National Socialist circles which were adherents of homeopathy, that he was not alone in this, and to show that international circles represented this point of view also, I offer this essay of this Surgeon General of the U.S. Army. He says that for scientific progress we have barely the choice between mice or men.

THE PRESIDENT: Does the Prosecution object to the introduction of the document?

MR. SPEECHER: Well, I still don't understand its relation to the charges, your Honor. We certainly don't disagree with the fact that that is an authentic document of a person who can speak with authority on

vivisection but we certainly did not try to bring vivisection in this proceedings by either the indictment or —

THE PRESIDENT: I don't know whether the Tribunal has the view of the Counsel for the Defense. Perhaps an inquiry from the Tribunal might help. Is it your purpose, Dr., to show that the attack or attacks that were made upon the defendant because of his view with respect to vivisection were not based upon recognized scientific principles but were, rather, political in character because of these other exhibits that you have been speaking about just a little while? Is that your view?

DR. MELTZ: Yes, that is my view. That is my view. And the submission of this article has nothing to do with the Prosecution but with the Defense.

THE PRESIDENT: And do you offer this exhibit that is entitled, "Life or Men" for the purpose of showing that recognized medical authorities do adhere to the proper use of vivisection in research and in science? Is that the purpose of it?

DR. MELTZ: Yes, that is my opinion.

THE PRESIDENT: My only purpose in these inquiries is to get before the Tribunal and for the benefit of Counsel for the Prosecution as clearly as possible what your views are. Now, the matter to be settled is one of discretion as to whether it does or does not object to the exhibit.

MR. SPEECHER: Mr. President, I think we must object. We just don't think it has any bearing here. The statement that Dr. Helte made here that it is proper from a scientific standpoint to have made on vivisection we all agree to, and I don't see that there can be any question about it.

THE PRESIDENT: Perhaps the stipulation that the Prosecution has indicated that it is willing to make is about all you are trying to establish anyway, isn't it, Doctor?

DR. MELTZ: Well, I ask that the document be accepted for identification.

THE PRESIDENT: The document, of course, may be accepted for identification, Mr. Prosecutor, did I understand that you were willing to stipulate that vivisection is recognized as legitimate by reputable scientists and researchers?

Do not be embarrassed by the inquiry. Do as you see fit about it. I am not trying to put you in an unhappy situation. I am just inquiring in the hope that perhaps we might obviate this whole matter.

MR. SFRECHER: Mr. President, may we go over to tomorrow morning on this?

THE PRESIDENT: Yes, surely. This document has been marked as Exhibit 17 for purposes of identification, and will be passed for the time being. We will take it up in the morning.

BY DR. MELTZ:

Q. Professor Hoorlein, outside of these struggles which concerned themselves with pharmaceutical problems and vivisection, did you have any other point of dispute with party circles of government agencies?

A. I would like to come back to this question once more. It was not a matter of a more or less important scientific dispute; it was a question of the possibility of doing scientific work at all in the field of medicine in Germany.

On the 16th of August, 1933, Goering had promulgated a Decree which is in the documents which have been submitted, in which every animal experiment in Germany was forbidden, and anyone who would make another experiment on an animal was threatened with concentration camp. And now it was a question of whether it would be possible at all in Germany to carry scientific research or not. That was the basic question at issue, and I claim that I was the representative who carried on the struggle in Germany against hateful and powerful opponents.

Q. After this statement, will you please answer the question which I have already asked, whether in your capacity as plant manager in Elberfeld you had any differences with other agencies which you could only overcome by fighting those agencies?

A. Yes. I fought the government for its intervention by so-called materials regulations and supply plans. I did not do this because I believed that these were measures to prepare for an aggressive war, but because as a liberal man, I always was against the all-official governmental

interference in private and economic spheres.

For this purpose, I wrote to Dr. Schecht, then Reich Minister of Economics and I expressed my misgivings to him, and there ensued a correspondence with the State Secretary, Dr. Posse, and a whole number of other officials in the Reich Ministry of Economics. These documents will show that I carried on this struggle up to the year 1939.

Q. Your Honor, in order to support the statements of Professor Hoerlein, I now submit Document Hoerlein No. 18, as Exhibit 18. This is an excerpt from the transcript of the 44th Pharmaceutical Main Conference of the 30th of January, 1939, about increases in the level of production, and appended to this transcript there is the correspondence which Professor Hoerlein carried on with the Reich Minister of Economics, Dr. Schecht, and with Dr. Posse of the Reich Minister of Economics.

Another document dealing with this subject matter is the affidavit of Professor Dr. Kohn, which I am offering as Hoerlein Document No. 6, Exhibit No. 19.

It is on page 71 in Book 1, on page 72. Here the affiant speaks of the struggle of Professor Hoerlein with the Reich Ministry of Finance, and of his support of the Kaiser Wilhelm Institute for Research Work, and finally as Exhibit No. 20, I offer Hoerlein Document No. 10. This is an affidavit of Professor Butenandt, who says that Professor Hoerlein worked for the preservation of the German Scientific Tradition and Freedom of Research; that he protected them against the attacks levelled at them by the highest authorities of the party and the government.

As President of the Deutsche Chemische Gesellschaft, he shielded the company from party influence and always fostered scientific connections abroad.

Professor, would the pharmaceutical branch of Farben have had any advantage in a war?

A. The contrary is true. In case of a war, we would have lost all of our export, which would only be temporarily increased by war conditioned over production as a result of the great amount of our international business,

and of the long connections with foreign countries and foreign pharmaceutical industries, our attitude was absolutely international.

Q. When were you sure that war would come?

A. Until the end, I did not believe that war would come. This is shown by many facts which can be proved. First of all I would like to say that in June, 1939, in the Pharmaceutical Main Conference, we discussed the project about starting manufacturing in France. That is to say, that was not even three months before the beginning of the war.

Q. Without any question I offer on this subject, Document Hoerlein No. 47, and I ask that it be accepted as Exhibit 21. It is an excerpt from the minutes of the 75th Meeting of the Pharmaceutical Main Conference held on the 19th of July, 1939.

A. Furthermore, I would like to say this, that at the end of July, 1939, we had visitors from a firm in England. They visited us in Leverkusen and Elberfeld. At this occasion, Mr. Mann made a speech, which he will himself offer as a document, and which shows what our attitude was. This speech can only be explained if one presupposed our firm resolve to peace to be true.

Q. Is there any later date which would show what you believed, so far as war is concerned?

A. On the occasion of this visit, the editor of the Pharmaceutical Journal, Mr. Fitch, came, together with a woman correspondent of the Sunday Times and other people from England to Elberfeld, and after his return, Mr. Fitch reported in the Pharmaceutical Journal his impressions in Leverkusen and Elberfeld. Furthermore, even later than that, we were visited by two gentlemen, two directors of an English firm in Nottingham, whom we had worked together in Elberfeld and Hoechst.

So far as I am informed Professor Lautenschlaeger will submit the documents which speak about this visit.

Q. I, personally, will offer after what Professor Hoerlein has said, the decision of the Pharmaceutical Main Conference of October, 1940, to show that the gentlemen of the Pharmaceutical branch, knew of no plans of a

war with Russia at this time.

In this connection I ask that document Hoerlein 48 be admitted as Exhibit 22.

Document No. 49, that is on page 39 of Vol. I, as Exhibit 23.

Document No. 50 on page 41 of Volume 1, as Exhibit No. 24, and the correspondence in Document Hoerlein No. 51, as Exhibit 25.

Q. Professor, you have said and you have shown that you had struggled against the Party and that by your deeds you had rejected one of the essential points of the Party program. Now, the Prosecution has shown in a chart that you were a member of the Party since 1933, that you were alleged to have been such. Now do you explain this evident contradiction?

A. I shall show that this is no contradiction. When Hitler became Chancellor of the Reich in January 1933 the Nazi Party started a considerable propaganda activity in order to increase the number of its registered members. At the same time it was announced that the acceptance of new members, as far as I recall, would be stopped on the 30th of April 1933. Before 1933 I was a member of the Democratic Party. I was a convinced democrat and one of the founders of the Democratic Party in Wuppertal-Vohwinkel in the year 1919. Therefore, I did not join the Nazi Party. During the year 1933, even though I was not a member of the Party, I became a member of the Municipal Council. I accepted this position because I believed that, according to the rules of democracy, the Nazi Party would also give non-members their due part in influencing the public. In my capacity as member of the Municipal Council of the City of Elberfeld, I have, as I believe, made my influence felt in a manner which found the approval of all my fellow members. In the year 1934 the Kreisleiter approached me and told me that on the basis of a new law the Municipal Council men would have to become members of the Nazi Party. I was now faced with the alternative to renounce my influence, as I had up to now been able to exercise locally, and thus to represent interests of the plant which I was directing. In addition there were the considerable differences which I had had with Party officials, which I have already described, and which touched upon the bases of our scientific research. As a Party member I thought I was able to represent the interests of my plant and of German scientific research in a better manner if I decided to comply with the wishes of the Kreisleiter. Thus, in the year 1934, before the well-known Roehm coup, I became a member of the Nazi Party. Since the acceptance into the Party was then blocked, my written application for membership in the Party

was obviously dated ahead.

Q. Do you have this written application?

A. Yes, I still own this.

Q. Didn't you have any basic misgivings about various Party platforms in the Nazi Party program?

A. I would say here that, at that time, I did not foresee the development of National Socialism. For me the economic and scientific points of view were decisive. The economic position in Germany before 1933 was so catastrophic that something had to happen, and many things did happen in 1932 which improved the situation. As far as national politicians are concerned, the program was based on the self-determination of peoples, which corresponded to the Wilson Fourteen Points; and I would also like to refer to the statement of Justice Jackson in his Opening Statement before the International Military Tribunal which did not at all reject all the Nazi Party points. I have references to the official transcript of the International Military Tribunal record, Page 123, Volume II. According to this Justice Jackson stated that some of the Nazi Party seemed quite reasonable to loyal citizens, that others, for example the demand for the abrogation of the Treaty of Versailles were legally unimpeachable as long as they were accomplished without aggressive war, and that a third group was not only not criticized by him, but that he even wished that they would be generally recognized. The method of violence mentioned by him, with which certain points were later carried out, were not yet recognizable at that time. On the contrary Hitler and his advisors always preached that the aims of National Socialism could only be accomplished in peace. It was completely clear to me that there were some points with which I could never agree, thus, for example, with anti-Semitism. But during my membership in the Party I did not conduct myself in any other way than if I had not been a member. I think that I was never an opportunist nor a fellow traveller, for after a cool deliberation I think I did what I could account for considering my responsible position and considering the interests which

I had to represent. The local Party agencies were aware of my struggle against Streicher and his henchmen. When I was faced with the decision of entering the Party I told the Kreisleiter that I would never wear a uniform and that I would never be active politically in the National Socialist sense, but that my cooperation would extend only to economic matters.

Q. You said, "During my membership I did not act any different than if I had not been a member." In order to prove this sentence, namely, that membership in the Party did not influence the conduct of Professor Hoorlein as a man or as a director of the plant, I submit two affidavits which were made out by members of the Elberfeld plant.

These forty-four people, who call themselves anti-Fascists, and who were, therefore, all opponents of the Nazi Party, given these affidavits to Professor Hoorlein the testimony and confirmation that he always acted in a manner in which an honorable man would act. I do not want to read these affidavits, but I merely offer them. One document is No. 19. This is in Book I, on Page 88. I ask that it be accepted as Exhibit No. 26. The second document Hoorlein No. 57, is in Book I, Page 96, and I ask that it be accepted as Exhibit No. 27. Finally, as far as this subject is concerned, I offer Hoorlein Document No. 7, in Document Book I, Page 73, which I offer as Exhibit No. 28. This is the affidavit of the Nobel Prize Winner, Professor Otto Hahn, the well-known inventor of the uranium fission, and who says in his affidavit that even though Professor Hoorlein, with whom Professor Hahn was working, granted great assistance to the Kaiser Wilhelm Institute, he had never set any tasks for important jobs for war, and that he had never exerted any pressure on the research on uranium fission and atomic energy with the aim of using it in war.

THE PRESIDENT: Dr. Nolte, if this is a convenient place for you to suspend I think we'd better recess now.

DR. NELTZ: Your Honor, if I could just submit three more documents, without saying anything about them, I would conclude this subject.

THE PRESIDENT: Certainly.

BY DR. HELTE:

I submit Hoerlein Document No. 5. This is an affidavit of the Nobel Prize Winner, Professor Hindous, Book I, Page 76, who expresses himself in the same sense as Dr. Hahn. It will receive Exhibit No. 29.

Then, I offer Hoerlein Document No. 9, an affidavit by Professor Koegl, in Utrecht, who states that Professor Hoerlein intervened on his behalf with the Kreisleiter of Utrecht during the occupation, and that he owes it to Professor Hoerlein alone that he escaped being confined to a concentration camp.

The last document is the affidavit by Amundus Hoffmann, Hoerlein Document 3.

Mr. Sprecher calls my attention to the fact that the preceding document Hoerlein Document No. 9, is to receive Exhibit No. 30.

The affidavit by Hoffmann, which was just announced and which is Hoerlein Document No. 3, is to receive the Exhibit No. 31. This is an affidavit by the Chief of the I. G. Farben factory guards in Elberfeld about the measures which Professor Hoerlein undertook to protect the plant there, when the Americans advanced and the Party issued the order to destroy the plant. These measures were carried out even at the risk of armed resistance to the Party where necessary, in order to protect the plant.

This concludes the first part of my presentation.

THE PRESIDENT: The Tribunal will now rise until 9:30 Monday morning.

(THE TRIBUNAL RECESSED AT 1637 TO RESUME SESSION AT 0930 MONDAY,

2 FEBRUARY 1949)

Official transcript of the American Military
Tribunal 6 in the matter of the United States
of America, against Carl Krauch, et al,
defendants, sitting at Nurnberg, Germany, on
February 1948, 0930, Justice Shake presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI.
Military Tribunal VI is now in session. God save the United States of
America and this Honorable Tribunal. There will be order in the Court.

THE PRESIDENT: You may report, Mr. Marshal.

THE MARSHAL: May it please Your Honors, the defendants Lautenschlaeger,
Schmitz, Haefliger, Krauch, Schneider, and Ilgner are absent from the
court room.

THE PRESIDENT: The defendants named by the Marshal have been
excused by the Tribunal from attendance. Judge Hebert, do you have
anything to say with reference to the program today?

JUDGE HERBERT: Mr. President, Dr. Helte wishes to interrupt the
direct examination of his client to put two additional witnesses on
the stand who happen to be available this morning, and I believe he is
now ready to proceed. Is that correct?

DR. HELTE (Counsel for Goerlein): Only one witness for today --
Professor Butenandt.

JUDGE HERBERT: I am in error. That is correct. Just one witness.

THE PRESIDENT: Have you any further announcement, Dr. Helte?

DR. HELTE: I have talked to the Prosecution and a read with Mr.
Sprecher to the effect that the prosecution have no objection to my
interrogating Professor Butenandt as an expert witness.

THE PRESIDENT: Then the witness will rise, raise his right hand,
say "I", and state his name.

WITNESS: I, Adolf Butenandt

THE PRESIDENT: Now please repeat after me the oath. I swear by God
the Almighty and Omniscient, that I will speak the pure truth, and
will withhold and add nothing.

(The witness repeated the oath).

THE PRESIDENT: You may be seated. You may proceed, Doctor Holte.

DIRECT EXAMINATION

BY H. MELTZ:

Q Professor Butenand, when and where were you born?

A I was born on 24 March 1903 in Wesermünde Lehe, which is now called Bremerhafen Lehe.

Q Where do you live now?

A I live in Tübingen in Württemberg.

Q Would you please tell the Court what qualifications as an expert you possess? Would you give us a brief description of your academic career?

A After World War I was at the Universities of Marburg and Göttingen. I studied science and the elements medicine. My aim was to become a physiological chemist and therefore I studied chemistry as well as biology in the widest sense of the word. This included physiology and pathology. I studied under Adolf Windaus in Göttingen who was awarded the Nobel Prize. I graduated under him and for several years I was his assistant. In 1931 I was given a position by the University of Göttingen. Between 1931 and 1933 I was director of the organic and bio-chemical department laboratory of the university in Göttingen. In 1932 until 1936 I was a member of the International Commission for the Standardization of Hygienic Arrangements of the League of Nations. The task of this commission was to establish hygiene relating to an international basic matters. In 1933 the League of Nations government in Danzig decided to appoint me as a lecturer at the Technical College in Danzig. From 1933 until 1936 I was a professor of chemistry in Danzig and I was in charge of the organic and chemical institution there. In the year 1935 I availed myself of an invitation of the Rockefeller Foundation to study for a while in the United States. While I was in the States I acquainted myself with all the more important research places where my type of science was being taught. I still have

relations with these institutions. In 1935 I was invited to become a professor at Harvard University in Boston in the United States, but as I wanted to remain in Germany I did not accept the invitation. In 1936 I was appointed a director at the Kaiser-Wilhelm Institute for Bio-Chemistry in Berlin-Dahlem. This is my position today but the only thing is that this institution is no longer in Berlin-Dahlem but it is now in Tuebingen where it was evacuated during the war. After the war in 1945 I was, in addition, appointed a lecturer for physiological chemistry at the University of Tuebingen. I was also appointed a director of the Physiological Chemical Institute of that University. I am in charge of both these institutions at the same time. Such scientific work as I have published is usually concerned with the bio-chemical elements of agents -- that is to say of agents with a definite physiological effect. My main field of work is concerned with elements which are agents in that sense, such as hormones, vitamins, enzymes -- but at the same time I also dealt with chemical and therapeutical problems. To sum up I might say that I am not a physician, but I believe in experimental and theoretical medicine, the aim of which is to enlarge the medical equipment from the experience gained at the sick bed and to increase our knowledge both of normal and pathological events within the body and above all to develop new and better drugs.

Q Professor, did you, until 1939, find that you were recognized in the international field?

A Yes, I was recognized by a number of international agencies. I am an honorary member of the Societe d'Endocrinologie in Paris; of the Thyssenian Society of Science in Hungary; I am also a member of the Society of Doctors in Vienna. I have been awarded the Pasteur Medal by the University of Paris, as well as the Scheele Medal of Stockholm, and in 1939 I was awarded the Nobel Prize for Chemistry together with Professor Hunsicker of Zurich.

Q How was it that you were not in a position to accept the Nobel Prize?

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A In Germany, since 1937, there was a law that German scientists must not accept the Nobel Prize. This law affected me.

Q Were you in the Wehrmacht during the war and did you hold a position in that organization?

A No, I was never in the Wehrmacht. At the end of the war I was called up to the Volksturm, the Home Guard, but I was not actually doing any service with them.

Q As far as the civilian sector was concerned, did you hold a high position?

A No, I always devoted my time to my research work at the Kaiser-Wilhelm Institute, together with my collaborators. As far as the selection of subjects was concerned, I had an entirely free hand even in wartime.

Q Did you or do you have any relations to the pharmaceutical industry?

A Yes, I was closely associated with the pharmaceutical industry because large scale research tasks in my subject were possible only if you collaborated with the chemical industry. I had particularly close relations on a contract basis I had since 1927 with the Schering A.G. of Berlin, a firm with which I carried out most of my work. Moreover I have very friendly relations with the Hoffmann-La Roche A.G. in Basel.

Q. Did you have any relations with I.G. Farben?

A. I had no contract with I.G. Farben. Between the plant at Ellersfeld and Professor Hoerlein and my own institute there were, since about 1938, relations on a purely scientific basis in the field of virus research. These relations developed on the following basis. When the National Socialist policy as regards science became more and more outspoken in the field of applied science, and when danger became acute that the pure type of basic research was no longer sufficiently promoted, Professor Hoerlein, in the most generous manner, found ways and means to carry out work in the field of basic research. From 1938, the Kaiser-Wilhelm Institute for Bio-Chemistry was given through the initiative of Professor Hoerlein, by what was formerly I.G. Farben A.G., means and money to establish a department for virus research and keep it going which later on collaborated with two departments established on the same basis with the Kaiser-Wilhelm Institution for Biology, and this was combined into one big place for virus research. In that department only pure basic research was encouraged concerning the problem of types of virus and their relationship to hereditary symptoms. Money was given by Professor Hoerlein entirely on his initiative without which this department could not have been established, was supplied without contract with I.G.

Q. Now, from your knowledge and experience would you say that you can give an opinion on the origin and development and clinical experiments of new drugs?

A. Yes, certainly.

Q. Then can you tell me first what is a chemo-therapeutical drug.

A. The general meaning of that term is that every chemical substance which is supposed to have healing effects is a chemo-therapeutical substance. In a more precise sense of the word you call a chemo-therapeutical substance a substance alien to the human body which

is used against infectious diseases, because of its qualities to kill anything which causes a disease in the body, in doses which must not harm the patient.

Q. How is a drug of that sort developed?

A. A drug of that sort is invented in the most laborious and sacrificial work, done by a group of scientists who work and experiment according to a plan. As the drug is being developed we can distinguish between two stages. One concerns the chemical production of the drug from natural matter or by synthetic processes in the laboratory. The second stage is reached with the physiological and pharmaceutical and toxic examination of the substance in animal experiments.

Q. Is it customary to publish results of that stage in a memorandum or at least write it down in a memorandum?

A. Of course, that is customary.

Q. What is the significance of that memorandum which, as we have seen in this trial, is sometimes called expose?

A. This memorandum or expose, as you call it, sums up the results gained in the experiments. It forms the basis of a possible application of the drug in the hospital. From the expose you can see with what justification there is and with what certainty and what doses the doctor can use the drug the first time he faces the patient with it.

Q. What does one mean by a clinical test of these drugs?

A. The question whether a drug which has been through the animal experiment stage will fulfill its expectations in the human body can only be decided on the patient. This is what the clinical test is supposed to achieve. Experienced and responsible doctors, on the basis of the memorandum, have observed the new drugs with all necessary safeguards, but for that they need somebody who is ill. This is what you call the clinical test or clinical experiment. Not clinical experiment -- it should be clinical trial (sic) depends on the result whether the drug is released for the practice of a doctor.

Q. Professor, are you familiar with the ten rules which Military Tribunal I has established here concerning human experiments?

A. Yes, I have them in front of me here.

Q. You have studied these rules, have you? You know what they are about?

A. Yes..indeed.

Q. Are these rules also applicable to therapeutical clinical tests?

A. As I see it, they are not, because they were established for experiments on human beings with which we are not concerned in the clinical tests which we are talking about now. Of course these rules will apply in the sense that they advocate general medical ethics, ethics which would apply to any actions of any doctor. No experiment should ever be made superfluously. It must always be justified and in any experiment and with every clinical test every precaution must always be taken.

Q. Does the rule according to which the experimental subjects must be informed about the purpose and the extent of the experiment apply also to a therapeutical experiment?

A. I don't think so, because the motive, the justifiable motive that when there are experiments on human beings which have established these rules is not given with regard to a therapeutical experiment. When you experiment on a human being the danger of life is always risked, for example, such by infecting somebody intentionally with a virus. It goes without saying that the man who carried out the experiment has the duty to concentrate on that danger in every detail. A therapeutical experiment —

Q. May I just interrupt you for one moment? Your Honor, the interpreter translated just now therapeutical "versuch" with "experiment" as he did before, when Prof. Batemant mentioned the term "human experiment." It is quite impossible that this essential difference can be seen to clear up which I have asked Prof. Batemant to clear up here if the interpreter uses the same term for those two important terms, namely "experiment" and "test" — that is to say, therapeutical test or experiment. I would therefore like to ask the interpreter, if the Court agrees, to translate "therapeutischer versuch" by using "test" or "trial", as Prof. Batemant has said himself at the beginning of this interrogation.

MR. HILSHOFF: If it please the Court, the difference between "test" and "experiment" is just not existent in the English language. Both "experiment" and "test" can be perfectly legal, depending upon the circumstances in which it is performed, exactly the same as both "test" and "experiment" can be illegal, depending upon the circumstances in which they are performed. To put all this emphasis on the word "experiment" is surely a backhanded way of trying later to interpret documents in which you speak of experiments and speak of tests: the words by themselves had no significance in connection with whether an experiment or a test is illegal or wrong or immoral. That is dependent solely upon other factors than the word that is used, and the Prosecution would object to any artistic interpretation of

the word "experiment" at this point which would indicate that experiment is an illegal thing whereas test is a legal thing.

THE PRESIDENT: There are two matters suggested by the observations of counsel. In the first place, this Tribunal is not issuing directives to the translation staff as to how to translate a language that we know nothing about officially. If there is an error in the translation or if the translation is questionable, counsel can make their observations known to the Tribunal, and if it becomes highly important we will try to resolve the question of translation like we would resolve any other disputed fact in order that we may have the benefit of the views of counsel. So much for the translation.

Now, as to the distinction — alleged distinction — between experiments and tests, we are hearing the testimony of a witness who has shown qualifications to express opinions. Regardless of what counsel now think, if this witness does draw a distinction between tests and experiments he is entitled to make it and it will be considered for what it is worth, like any other testimony that comes to this Tribunal.

We are not prescribing or limiting the distinctions that the witness may see fit to draw. Neither are we committing ourselves that we will or will not accept his testimony as establishing an ultimate fact.

Now, go along.

DR. WELTE: I would therefore like to merely ask the interpreter if he would kindly take into consideration the remarks which we have just made the subject of this discussion.

BY DR. WELTE:

Q. Professor, you were just about to answer the question whether the rule according to which the experimental subjects must be informed about the purpose and the extent of the experiment should apply also to the therapeutical tests. Perhaps you can repeat what you said before.

A. I said before that, as I see it, this rule must not necessarily apply to a therapeutical healing test because the justifiable motive in a human experiment to which has led to the establishing of these rules, does

not apply to the therapeutical test. In the case of a human experiment, danger to life and limb is intentionally caused and it goes without saying that the one who carries out the experiment has the duty to draw attention to that danger in every detail. To check up therapeutically on a drug serves the purpose of preventing a danger which already exists to life and limb. I think there might even be considerable misgivings that a doctor might fear to tell a patient on what he has in mind, therapeutically speaking, and tell him in advance of possible unpleasant but innocuous effects, because thus the favorable effects of a drug might be jeopardized by psychological reactions on the part of the patient.

Summing up, the conscience of the doctor must adjust itself to the individual character of a patient and he must find out whether and how far he should or should not enlighten the patient.

Q. The term "experiment" might lead to a misunderstanding, might it not, if you apply it both to experiments on human beings, in the sense of the findings of Military Tribunal 1, and to the therapeutical tests?

A. Yes, the term might easily lead to misunderstandings as we have discussed and as we have seen in this very court room. The German term "versuch" describes two entirely different things. The specific meaning of the term might be translated by "experiment", if we speak of physical, chemical, or experiments on animals. Apart from that there is a more general meaning of this term in the usual parlance which we use whenever we say "We want to 'versuchen' something." Even when the church says, "We shall always try to convert heathens to Christianity," everybody will see that the term "versuch", trial, or attempt, cannot be translated by "experiment". The same applies to clinical tests where we try to save the life of a patient.

Therefore, one must make a difference between the two meanings of the term.

Q. Now, as far as we are concerned, it is important that you should answer the question: Is it possible to, under German usages, to call a therapeutical test an experiment?

A. As the German language has it, this must not be done at all. I already pointed out that the experiment creates danger. The object of the experiment is changed by an injection. A boiling test from the outset runs "eliminating" a danger which already exists.

Q. In the case of clinical or therapeutic tests you frequently use the same terms which are still making an evil sound in our ears from the Medical Trial, such as "series of experiments" or "experimental subjects", or the term "tolerance test", or "early case".

Would you please give us your comments on these various terms and tell us what within the field of therapeutical tests we should understand by them?

A. A series of experiments in the case of therapeutical experiments means nothing but that there is a number of patients, ill persons, who are supposed to be helped with the new drug. The experimental person within the scope of clinical tests means nothing but the individual patient. A tolerance test consists of the doctor finding out in what manner a certain drug can be tolerated by the patient. That is to say, how he can take the drug without suffering undue hardship. Some drugs are more effective when taken by mouth, others should be taken rectally, and others again should be injected, and so on. The decision on that point can be found by the doctor making tolerance tests.

Also, Doctor, you asked us about the term "early case." Well, now this is a clinical term which is used particularly in the case of infectious diseases. What distinguishes infectious diseases is that between the day of infection and the first appearance of symptoms a period of time elapses when the patient does not feel ill and does not yet show any symptoms of illness. That is what we call the period of incubation.

If and when a patient, after the period of incubation, shows the first symptoms of disease although they may not necessarily specify a definite disease, and he then goes and sees his doctor, we are concerned with a premature case. But if he comes after that period we are concerned with a delayed case, and it goes without saying that what the doctor does, therapeutically speaking, he is much more certain of himself if the patient turns up soon enough, and therefore it is much easier to find the right drug. And one should always say whether it was a premature case or a delayed case.

Q. What would you say was the most essential point in developing a therapeutical drug?

A. Having found what possible effects a drug might have, the test of its toxic, its poisonous implications becomes the most essential point.

Q. Can you tell me whether or not special efforts made in that respect in the laboratories which you know, including those of Farben?

A. That goes without saying. To test the toxic effect, all these plants had particularly well-equipped departments with trained and well-versed pharmacologists with a high sense of responsibility. It seems to me that the confidence which prevailed throughout the world in all drugs coming from well-known firms such as Farben or Schering A.G. and others is explained by these conscientious tests of their pharmacological qualities.

Q. What is the significance of finding the toxic effects regarding the question whether a substance is usable as a drug or not?

A. A drug must, as far as the dosage in which it is issued is concerned, must not have poisonous effects. Otherwise it cannot be used as it might harm the patient.

Q. As far as German medicine was concerned, did it in 1941 or 1942 find any effective means of combatting typhus?

A. A serum was known against typhus which could be used as a prophylactic and was obtained from the intestines of lice. It was therefore somewhat difficult to obtain and it could be obtained only in small quantities, and the result was by no means guaranteed. Any definite method of combatting typhus did not exist, as far as I know.

Q. What is your opinion of the danger of typhus in 1942 and 1943?

A. I have no experience of my own in that field. According to reports which I read it was very acute, especially as mortality in the case of typhus amounted to 30-50 percent.

Q. Would you regard it as comprehensible that a medical research worker who was concentrating on virus research was at that period of time looking for means to encounter that danger?

A. What do you mean by "comprehensible," Doctor--it was their utmost duty, and it would have been a lack of responsibility to have neglected it.

Q. Would that apply also to the research institutes of the pharmaceutical industry?

A. But of course. On the basis of the money that they had, the institutes they had founded, and their trained collaborators, it was their mission to find and develop new methods to combat typhus.

Q. I have shown you the memorandum of the Elberfeld Institution concerning Drug B-1034.

If Your Honors please, in my future examination of Professor Hoerlein I shall introduce this into evidence. I merely mention it now in advance because Professor Butenandt had to look at this memorandum in order to arrive at an opinion.

Do you have this memorandum before you?

A. Yes, I do.

Q. Do you know the originators of it, that is, who was in charge of these Elberfeld institutes?

A. Yes, I know Professors Domagk, Kikuth and Weese personally, and in the old days I used to visit them in their laboratories.

Q. Would you give us your opinion of this memorandum?

A. The memorandum fulfills the demands which you must put up if you are a strict scientific worker, if, on the basis of that memorandum, the drug is to be used on a patient who is suffered from typhus.

Q. May I understand you to the effect—

MR. MINSKOFF: Perhaps we could save some time on the questioning of this witness if we could limit the questioning to things which are relevant before this Court. I take it the expose which is being commented on now—and probably will be at some length—does not relate to any products concerned in any of the medical experiments before this court. It is a theoretical discussion on what could be done in an ideal case. It has no relevance, no bearing, and no materiality on any issues which this court has to consider.

DR. NELTE: If the Tribunal please, I am amazed to hear that Mr. Minskoff finds that to deal with Drug B-1034 should be theoretical—

MR. MINSKOFF: I am sorry; I didn't see that.

THE PRESIDENT: That is the inquiry.

MR. MINSKOFF: If it is on 1034, then there is no objection to it.

THE PRESIDENT: Very well, there is nothing before the Tribunal. Go ahead.

BY DR. HELTE:

Q. Would you please continue?

A. What I said was that the expose or memorandum fulfills all demands which you would put up if you criticize strictly and scientifically, if, on the basis of the memorandum, the use of that drug is to be advocated. In animal experiments the new drug was tested thoroughly and it seemed guaranteed that it could be used clinically without any risk. It should also be remarked that the drug belongs to a class of medications, which we call sulphonamides, the partial effects of which have been known for some time and which have shown their value throughout the world.

Q. Is it your opinion that the use of that drug can do damage to the health of somebody who is suffering from typhus?

A. So far as human caution can say, No.

Q. What would you say, if somebody who had been treated by that drug, would have died?

A. It is almost certain that he did not die because of the drug. He died from the disease, although he was given the drug.

Q. If a doctor in the Armed Forces in 1941 or 1942, would have addressed himself to Farber, and asked them for a drug with which to combat typhus, would there have been misgivings about refusing to hand that drug, B-1034, over to a doctor?

A. Certainly not, since the danger to health existed on the one hand, and as on the other hand, the exposure has made everything quite clear scientifically, it was as I see it, the duty to hand over the drug.

Q. How would you judge this very same case if this doctor who addressed himself to T.G. would have been a doctor in the SS who worked in a concentration camp?

A. My opinion would remain the same. If that doctor had been refused the drug, it would have meant that it was refused to concentration camp inmates who were ill, - that is to say, it would have been refused to give medical assistance to those people. That sort of an action would, with every justification in the world, have been indicted before a Nuremberg Tribunal.

Q. Professor, I also show you the exposure of Furber Elbarfeld concerning methylene blue tests, on typhus, and I ask you to look at it. What is your considered opinion about that drug, and about that exposure?

A. My considered opinion is as positive as the one I have just mentioned. In the case of methylene blue, the case is yet simpler, because for decades this drug has been part of the medical treasures

of all countries. It was used for malaria, typhoid and many other infectious diseases, thus we have a large store of medical experience concerning the tolerance of this drug, and any accompanying effect which it might have.

So far as the expose concerning methylene blue is concerned, after all, we are not concerned with developing a new drug, but all we have discovered is a new indication.

This discovery of the new indication was made during animal experiments on mice which were infected with typhus. I should like to point out that in this expose, all experience gained from literature concerning methylene blue have been compiled, and any possible damaging effects which was observed are conscientiously listed, which I think is worthy of note, because these things themselves are known to doctors. In this case again, the aim of the expose has been conscientiously observed and every toxic effect appearing from it is to recommend methylene blue for typhoid.

Q. Last I repeat myself, so far as the handing over of this drug to doctors is concerned, is your opinion the same which you expressed in the case of handing over B-1034?

A. Yes, entirely the same.

DR. MELTZ: If the Tribunal please, these two exposes concerning B-1034, may be found in Document Book Hoorlein 3. It is Document 81 on page 91 and Document 87 on page 147.

The expose concerning methylene blue may be found in Document Book 3, on page 97. It is Hoorlein Document 82, which, if I may, I shall introduce at some later time.

Q. Professor, only a few brief questions of a general nature. What knowledge did you have of the existence of concentration camps and of events occurring therein?

A. My knowledge of concentration camps was practically nil. I knew that some existed. So far as names are concerned I know only

Dachau and Oranienburg before the end of the war. The names of Auschwitz, Belsen, Buchenwald, etc., I learned for the first time after the war. Of what went on in the concentration camps I had no idea at all.

If, during the war I visited foreign countries, and some people dropped hints that crimes were allegedly committed in certain concentration camps I did not believe them for the simple reason that these things were entirely beyond my powers of imagination.

That is all that I can say about that.

Q. Did you know that in a concentration camp a doctor who worked there might face a conflict as far as his conscience and ethics as a doctor were concerned?

A. That was entirely unknown to me.

Q. Did you hear anything about the fact that in concentration camps, experiments were carried out on inmates, - perhaps this is a superfluous question now, - but nevertheless I would like to ask you this?

A. I did not even hear a remote hint about this.

Q. Professor, do you know Professor Hoorlein personally?

A. Yes, I know Professor Hoorlein personally, and have ever since the period of time when I was the assistant of Windhaus at Goettingen. Professor Windhaus frequently visited the virus research laboratory in Goettingen, because Professor Hoorlein and Windhaus worked together on the important subject of Vitamin D.

From the collaboration on virus research I also know Professor Hoorlein from his virus research in Dahlen. I also knew him as the Chairman of the German Chemical Society, of which I used to be a member, and of course, I know his scientific work which he did in Elberfeld.

Q. Can you give me one fact which would describe the character of Professor Hoorlein within the scope of the things we are concerned

with here?

A. I think I could give you a large number of facts from which Professor Hoorlein's scientific attitude, which is above reproach, would become clear, and about his conscientiousness in particular and his conception of right. But I might mention one incident which shows Hoorlein's conception of right, even as far as his late enemies are concerned.

During the war all laboratories were, it goes without saying, isolated from scientific intercourse with foreign countries, whose methods are unknown to us now, again certain scientific publications would find their way from foreign countries, including the United States, to Germany.

The Chairman of the Board of the German Chemical Society discussed the question as to whether or not it was useful to circulate these isolated copies of these foreign scientific publications and re-print them, perhaps in German, so that they would reach all chemical laboratories.

I remember distinctly that Professor Hoorlein said at the time:

"If I have any knowledge of the fact that somewhere in the world a German magazine or publication is being reprinted, then I have no misgivings that we do the same; but, as long as this is not done in a foreign country, we won't do it ourselves. The German man of science even in wartime must not violate the right and law even as far as his enemies are concerned and I shall see to it as much as I can that this must not be done."

I do not wish to give any more details of Professor Hoorlein's character but I might sum everything in one sentence. I worship and admire Professor Hoorlein's genius and sense of responsibility as the man who was in charge of the Research Institute in Elberfeld, an institute to which the whole world owes thanks for the invention of important drugs for the benefit of suffering humanity.

My personal debt of gratitude to Professor Hoorlein I do not wish to discuss here on the witness stand. The Tribunal is aware of the fact by virtue of an affidavit which I have submitted some time ago.

DR. MEITE: If the Tribunal please, this is an affidavit which is contained in Document Book I on page 80. The document number is Hoorlein No. 10 which was introduced and accepted as Exhibit 20.

I have no further questions to this witness. Thank you very much.

THE PRESIDENT: Do any other counsel for defense desire to interrogate the witness before he is cross examined by the Prosecution?

There being no such request, the Prosecution may cross examine the witness.

MR. WEISKOPF: If it please the Court, we think that we might save some time if the recess can be had now instead of fifteen minutes from now.

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THE PRESIDENT: Very well; we will rise for our recess.

MR. HINSKOFF: Thank you.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Prosecution may cross-examine the witness.

CROSS EXAMINATION

BY MR. JENSKOFF:

Q. Professor Butenandt, were you a member of the Nazi Party?

A. No, I was not a member of the NSDAP, but I was an applicant in 1936, in Danzig. I never became a regular member; I never took the oath; I did not have any membership book. My political investigation was made in the summer of 1945 by the French military authorities in Baden-Baden.

Q. Thank you. I just asked you if you were a member of the Party. Did you ever pay dues to the Party?

A. I did pay dues to the Party, as an applicant.

Q. You referred, Professor Butenandt, to the principles enunciated by the Court in the Medical Case, and you stated that in your opinion they did not apply to therapeutics. Is that right?

A. I said that they did not apply to clinical tests of new drugs, at any rate, only in so far as they give general medical directives corresponding to medical ethics in general.

Q. Perhaps you did not understand my question, Professor Butenandt. To what kinds of tests and experiments, in your opinion, would they apply?

A. They apply to all experiments on human beings; that is, if I perform experiments on human beings such as are usually performed only on animals. If I take a healthy human being and prepare him for the experiment, if I make him sick, for example, and then proceed to heal him, that is what I call an experiment.

Q. Yes, thank you. I think I have your answer, Professor Butenandt. In other words, all of the experiments with which we are concerned in the present case, and with which you are not undoubtedly familiar, would come within these ten principles enunciated in the

Medical Case. Now isn't that right?

A. No, I think not.

THE PRESIDENT: Mr. Prosecutor, we do not understand that the witness has testified as to any knowledge of the experiments to which you refer. He has testified only as an expert, generally, and I believe that your present question would be beyond the scope of cross-examination.

MR. DENSKOFF: May I rephrase that, if it please the Court?

BY MR. DENSKOFF:

Q. Mr. Witness, whether vaccines are involved, or whether therapeutics are involved, is it not true that if, in the particular test or experiment, persons who are healthy are, for the purposes of the experiment or test, made sick, then such tests or experiments would fall within the meaning of the principles laid down by the Court in the Medical Case?

A. Yes. If —

Q. Thank you.

THE PRESIDENT: Did you desire to add anything to what you said, witness? You said "if".

THE WITNESS: I wanted to explain.

DR. WELTE: I have an objection, Mr. President. That Mr. Minskoff just asked falls under the questions which I have already asked the witness, and he answered in the affirmative. However, the witness cannot testify to the fact that this was the subject of Military Tribunal I. Therefore, I ask that Mr. Minskoff's question not be applied to Military Tribunal I, but to this case.

THE PRESIDENT: On the state of the record, we will take the position that the question was proper and the answer complete, because the witness answered "Yes", unequivocally. The witness did say "if", as we understood it on the translation, and we merely wished to afford him an opportunity to complete his answer if he did not deem it complete. But be that as it may, time could be conserved by the asking of another question, and if counsel for the defense thinks the witness did not have an opportunity to sufficiently answer the question, he may, on redirect examination, reopen the inquiry.

Ask your next question, Mr. Prosecutor.

BY MR. MINSKOFF:

Q Mr. Witness, you testified at some length about the word "Versuche", which you interpreted as "tests"; and "Experimente" as the German word for "experiments". If I understood you correctly, you made the distinction that in the first case it would be tests on human beings who were already sick, and in the second case, of experiments on human beings who were made sick artificially. Is that right?

A Yes, that is true, but I consider an attempt to help a patient not an experiment.

Q A patient is a person who is already sick?

A Yes.

Q Now, in the case of animal tests, is it not a fact that the word "versuche" is also used?

A Yes.

Q Even though in the case of the animal tests there is no question but that it is an experiment in your sense of the word "experiment"?

A Yes; in the case of an animal it is an experiment in the sense of the word "experiment" performed solely to obtain scientific knowledge, but not in any wish to help the animal.

Q Yes, and in the case of the animal experiment it is customary, is it not, to use the word "versuch" as well as "experiment"? Now isn't that right?

A Yes.

Q So it would not make any particular difference, as far as the meaning, I mean, when you use the word "versuch" and you translate it as "test" or "experiment". Isn't that true?

A One cannot always translate the word "versuch" with "experiment" or "test" interchangeably. It depends upon how the test is managed and what the purpose is.

Q Pardon me. I gave you the hypothetical case, and I asked you, as an expert, to tell me what the proper term was. I stated that in an animal experiment, where an animal is artificially infected, there is no question of the animal's being sick—I say, in such a case, isn't it perfectly proper German to use the word "versuch" in describing that experiment?

A Yes.

Q Thank you.

In your discussion of the Farben product methylene blue, you mentioned that this was not a new product, it was an old, tested product; isn't that right?

A Yes.

Q Now the same is true, is it not, of other products, such as acedine and ruthenol, isn't that so?

A No. These drugs were developed specifically for certain diseases. That was originally true of methylene blue too, but, in

application to typhus, it had been known for many decades in all its effects. That is the difference.

Q I am not quite sure I followed you. Are you saying that methylene blue has been an old treatment for typhus?

A No, no, not for typhus, for other diseases, for malaria, for typhoid, and so forth, and the only new thing was that it was used for typhus.

Q Precisely. Now, isn't it true that acedine also had been used before for other purposes? Isn't that an old drug?

A Yes.

Q Certainly. Now, isn't the real question not whether it is an old drug or a new drug, but the real question which prompts these various tests and experiments to be made is to determine whether it can have a new sought-for use, isn't that right?

A I didn't quite understand what I am to answer here.

Q Well, perhaps I can make it simpler. The question of a test or an experiment involving acedine or methylene blue is a question of determining whether this particular pharmaceutical product will cure a particular disease, and not whether it has already proved its worth in totally different diseases.

A But the difference is that a substance which has been known for years and used in the therapeutical pharmacopeia is known to the doctor in all its effects and all its dangers.

Q I take it by that you mean--and I think we understand each other--that such questions as whether the product is digestible, or whether the product will result in a fever or a rash, are the things you know in advance about the product, isn't that right?

A Yes.

Q And even on that limited and less important question, isn't it also true that you can't prognosticate with any degree of accuracy how a product which has proved digestible in one disease will act with respect to persons sick with a different disease, isn't that right?

A By animal experiments one can determine, with a certain degree of probability, what the effects on human beings will be. The decision can be made only in the clinical test. The clinical test must follow animal experimentation in every case, otherwise we could not have any drug at all.

Q So that actually, even as to the limited purposes of digestibility and skin reactions and fever, even as to those, the mere fact that it was used in other cases, in other diseases, isn't particularly helpful, you still require the new clinical tests for the new disease?

A New clinical tests for the new indication are necessary.

Q For example, in the case of scredine--you are familiar with scredine, are you not?

A Yes.

Q In the case of scredine, isn't it true that it had proved to be a worthwhile product in other cases and also in the case of animal tests, but in the clinical tests on human beings, even the simple things, such as the digestibility of the product, became known to be completely useless as non-digestible, isn't that true?

A I am not aware of that; I don't know.

Q When did you first hear of concentration camps?

A I have already said that I knew that concentration camps existed in Germany since 1933. The only names I knew were Dachau and Oranienburg; I knew no details about these camps.

Q Did you know that the ones who were in charge of these camps were the SS?

A No.

Q You had no idea who ran the concentration camps, did you?

A No, I did not know that, and I was never interested in that.

Q When did you first find out that it was the SS that was in charge of concentration camps?

A After the war.

Q 1945?

THE PRESIDENT: Mr. Witness, you nodded your head, but that does not get on the record. Will you please answer?

THE WITNESS: I beg your pardon. Only after the war, in 1945, yes.

BY MR. WINSKOFF:

Q Did you know what organization Mr. Himmler was head of?

A Yes.

Q Before the end of the war?

A Yes, of course.

Q When did you first find that out?

A That the SS was under Mr. Himmler was, I believe, known since 1933, but I am not sure. In any case, I had known it a long time.

Q Now, during—

THE PRESIDENT: I suggest to you, counsel, that that inquiry is perhaps beyond the scope of cross-examination. We don't want to appear impatient, but the Tribunal is much concerned, in the interests of time, in keeping all of the examination of witnesses in the proper field. I don't believe you need pursue that any further.

MR. WINSKOFF: No, I am not interested in pursuing that any further, if Your Honor please. This is for the purpose of credibility rather than factual information.

BY MR. WINSKOFF:

Q During 1941 to 1944, inclusive, you were at the Kaiser Wilhelm Institute?

A I was at the Kaiser Wilhelm Institute from 1936 until today.

Q And during all that time you had tested, or had other persons test for you, the value of many chemo-therapeutic agents?

A During this time I did not develop chemo-therapeutical agents and products in the strict sense but in my work I did develop a number of hormones, that is, remedies present in the body, they were tested on patients.

Q You had no work and no connection with work on chemo-therapeutical agents during the time of the Kaiser Wilhelm Institute?

A No, not in the narrow sense. I had no connection with the work on chemo-therapeutic agents against infectious diseases, only tests of drugs of body origin, such as hormones.

Q So that the chemo-therapeutic field is not your field, is it?

A That is right, in this strict sense.

Q Now, during your experience with the testing of hormones, may I ask, Professor Dutenandt, did you ever send or have sent your products for testing to concentration camps?

A I never sent my products to concentration camps and I did not see to it either. It was not the task of my research institute to supply doctors with preparations.

Q Where did you have your tests made?

A At clinics -- university clinics.

MR. MORSKOFF: Thank you very much.

THE PRESIDENT: Is that all, Mr. Prosecutor?

MR. MORSKOFF: That is all, Your Honor.

THE PRESIDENT: Any redirect examination?

Now, Dr. Nolte, I will say to you that this field of inquiry is getting down into a pretty narrow lane now, and we will appreciate it if you try to keep that in mind.

DR. NOLTE: I intend to ask only two questions.

THE PRESIDENT: Very well.

REDIRECT EXAMINATION

EXHIBIT

BY DR. MILT: (for Hoerlein):

Q The first question is this: Is it true that in the tests in the course of the development of drugs, one speaks of animal experiments "Tierexperimenteller Versuch"?

A Yes, that is correct.

Q I merely wanted to ascertain that if the expression "Tierversuch" is used, as Dr. Minskoff has said, one means the technical expression "Tierexperimenteller Versuch" -- animal experimental tests?

A Yes.

Q Is it not correct to say that "Tierversuch" is the technically correct expression?

A The expression "Tierversuch" is the common expression for "Tier-experiment" -- animal experiment.

Q The second question: Dr. Minskoff asks you whether in the chemo-therapeutic field you were not really an expert. This could be misunderstood and might prejudice your qualifications as an expert witness. Were the questions which I put to you in a subject of your own knowledge and experience and the science which you studied?

A Yes, they were. And I should like to say that the methods of the development and testing of the drugs are quite the same whether it is a natural body substance, a hormone, a vitamin -- in which I was especially interested -- or whether it is a chemo-therapeutic agent in the narrow sense -- that is, an artificial substance used against germs. The method of development is the same, and so from my experience I can testify from a knowledge of the development of chemo-therapeutics in the strict sense, even if I myself did not develop any such drugs.

DR. MILT: Thank you. No further questions.

DR. MINSKOFF: No further cross.

THE PRESIDENT: Does anyone desire to examine or cross examine this witness further?

Since no such request has been addressed to the Tribunal, the witness is excused from further attendance.

(The witness was excused.)

DR. WILKE: Mr. President; I should now like to continue the direct examination of the defendant Professor Hoorlein.

THE PRESIDENT: Then Professor Hoorlein may take the witness stand.

DR. WILKE: Mr. President, it just occurred to me that your Honors are probably aware that the interpreters in this case were the interpreters in the medical case and that they were pretty well familiar with the terminology.

THE PRESIDENT: That statement is interesting but calls for no comment from the Tribunal further that we do appreciate the very competent and helpful service of our staff of interpreters. And that may go on the record.

DR. WILKE: Mr. President, I want to make one brief remark before I begin with the examination. In document Book I and probably also in Document Books II and III there are some omissions. Individual documents are missing and there are some mistakes in translation. I do not want to waste any time by going into these matters here and I merely want to put into the record that I shall -- submit these corrections in writing through the Secretary General so that they may be considered when the record is revised.

THE PRESIDENT: That procedure is approved.

PROFESSOR HENDRICH HOORLEIN, a defendant, resumed the witness stand and testified as follows:

DIRECT EXAMINATION (Continued)

HENDRICH HOORLEIN.

BY DR. WILKE: (for Hoorlein):

Q Professor Hoorlein, on the questions of your responsibility as a member of the Vorstand, will you please tell me what knowledge did you have in your capacity as a member of the Vorstand or member of the Technical Committee about the plants of those branches of Farben

which did not belong to the Pharmaceutical Branch?

A As is customary in life, things are such here, that one often can not answer with a definite "yes" or "no", as it is a subject involving several fields and long periods of time, aside from the imperfections of memory regarding events which happened a long time ago among a large group of people. One can remember concretely only with the aid of minutes and filenotes, for example, minutes of the Vorstand meetings or Tea meetings, and one will be able to testify about details only in this way. In the conference -- the Vorstand meetings and the Tea meetings only, the result of decisions reached by the persons in charge of the considerations of the plant -- plant managers, the Sparta managers, were stated generally, motives and other considerations were not clearly expressed. Generally the finished plan was presented and the Vorstand legalized it, often retroactively.

Q Professor, will you please present the facts important for obtaining insight into developments at other plants and branches?

A In view of the great extent of Farben, both geographically and as far as subject matter was concerned, a detailed explanation of the details of a plan was not possible in the Vorstand meetings. Therefore, as member of the Vorstand I had only general knowledge of plans of the other branches of Farben. I did not have knowledge of details that had to do with the origin of plans, nor did I have any knowledge of details of execution. For example, I do not remember that the purchase of the Boruta plant, which was discussed here last Thursday and Friday, was ever mentioned at a meeting of the Vorstand. During the entire time that I belonged to the Farben Vorstand I did not have a single instance become aware that legally or morally inadmissible plans were being made, or that circumstances had arisen in the course of execution which were legally or morally objectionable. I should like to add that the individual plant managers had a large degree of responsibility and that the gentlemen of the Vorstand, to whom various duties were assigned on the

basis of their knowledge and experience, enjoyed the confidence of the Vorstand as a whole, that they would discharge their duties in a way which would not endanger the importance and the esteem in which Farben was held.

Q Will you now please speak about the various autarchy counts of the indictment and tell us what you know about them. In the period from 1933 until 1939, did you know that Farben, in the course of autarchy carried out plans which were intended for peacetime but which also be of great importance in the event of war and, in addition, some other projects which were intended only for a rearmament?

A Yes, I know that, but I have to explain this a little. I had no reason to object to any projects for peaceful purposes which were connected with certain endeavors at autarchy, only because they might be of significance in the case of war. I did not believe that there would be a war.

And it seemed to me to be something different on the one hand not to object to such projects and on the other hand to know that such projects are to be carried out for the purposes of a war of aggression. On my own responsibility no such projects were carried out, by the way. And I — that is, the Elberfeld Plant — had nothing to do with the Four Year Plan. I was of the opinion that a weak Germany, as it was before 1933, was a greater danger to peace than a normal armed Germany. But the idea of a war of aggression was never discussed by the Vorstand of Farben.

Q. Now, what about the various projects after the beginning of the war?

A. I was and am basically opposed to all war. My life's work was aimed at combatting epidemics, at easing pain, and healing wounds, not inflicting wounds. A war, however, creates an abnormal situation. Even as a peace-loving German, I could not want my fatherland to be destroyed. The laws of economics become abnormal during wartime. It is no longer the point of view of economy but only the necessity of war which decides and prescribes action. And thus, I considered the projects carried out during the war as regrettable necessities arising from the war and as orders of the Government.

Q. What was your attitude toward the plans of taking over enterprises in the occupied territories?

A. I was convinced that the representatives of Farben would always act correctly in such matters and that they always acted correctly. This applies both to the legal aspect and to their business conduct, just as I acted myself then, in 1934, I was in the position of negotiating with the Rhone-Poulenc firm. I suggested to the French partner a fifty-fifty participation in the net profits or participation in the turnover on a similar basis, and I believe that our French business friends will never reproach me in that respect.

Q. Did the Vorstand consider the international law aspect of such contracts?

A. No.

Q. Did you know that foreign workers and prisoners of war worked in Farben plants?

A. Yes, I did.

Q. Did you know that there are regulations of international law in this problem?

A. Yes, I knew that but I did not know the wording of them.

Q. Did you have no misgivings against employing such persons?

A. No. I assumed as a matter of course that all provisions of international law, especially the prohibition against employment in war industry, were observed; also that the foreign workers would be employed and treated in exactly the same way as German workers--That is to say, in a way worthy of human beings, decently; and from the point of view of food, as well as the circumstances permitted there, as we did in Tlberfold.

Q. Were any complaints heard in the Vorstand about mistreatment of foreign workers and prisoners of war?

A. Never.

Q. Did you in your laboratories and plants have any concentration camp inmates employed?

A. No.

Q. Did you know that in other plants of Farben concentration camp inmates were employed, for example, in the Monowitz Camp?

A. I heard the name Monowitz here for the first time. I knew only the name Auschwitz, and this name was used in the meetings of the Vorstand and the Tea.

Q. Did you know that in the construction and operations of the Buna Plant, Farben employed concentration camp inmates?

A. Yes, I know that.

Q. Did you have no misgivings against this practice?

A. In my opinion free workers would have been better. This

applies to the entire Vorstand, but especially to the gentlemen who were in charge of carrying out this project. The Vorstand had been informed, however, that this was an order and I assumed that it must be an alleviation for concentration camp inmates to have regular work. I also thought that care on the part of Farben could only improve the situation of these poor people.

Q. Professor, we shall now take up the subject of donations, in which you are concerned as a member of the Central Committee. What was the motive and what was the purpose of the donations which have been brought up in this trial -- that is, which have been presented in the Prosecution's case?

A. There were several motives, as far as donations to political parties on a democratic basis are concerned, which were paid by the Kalle Committee in the Verwaltungsrat in the years before 1933. These have already been discussed here. In addition to that, there were the scientific donations to promote research and science in general and young recruits to the ranks of science. Then there were the social, the welfare donations, which included the donations to the H.S.V. and to the -- "Winter-Relief." These donations were necessary since all charitable and welfare organizations had been dissolved by the Party and welfare had been taken over on a totalitarian basis. Finally, there were some donations to Party agencies. Here I should like to cite as the prime motive the protection against intervention and interference of the State and Party offices. The Party was decidedly anti-capitalistic. The so-called "donations" raised by the Party directly and indirectly were actually additional taxes which could not, however, be carried as "expenditure". There was no question of any voluntary basis for these donations, nor was there any intention of increasing the power of the Party. They were insurance premiums; or, I may say it more clearly, they were bribes "protection" money in varying amounts, depending, on the pressure exerted on the individual offices. Under these officers I include Geheimrat Schmitz, who is not present, who as the

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financial officer of Farbon was probably especially exposed to such
blackmail attempts.

Q Were all donations of Farben discussed and approved in the Central Committee?

A No, the plant managers had the right to make local donations, considering the local situations, within reasonable limits. These were the so-called plant donations.

Q That is sufficient.

A I just wanted to finish my thought. These plant donations were merely reported to the Office of the Central Committee but not discussed in the Central Committee. I can speak only about donations which were actually submitted to the Central Committee for approval.

Q Who submitted these applications about the individual donations?

A That was done by the so-called Central Committee Office. At the last annual meeting there was a list submitted comprising the major donations in the past year as well as suggestions for the coming year. One such list is Supplement Number 2 to Document NI-8265, Exhibit 1533, Document Book 80, German pages 154 to 162. In addition to that, the Central Committee, at every meeting, received the applications which had been received for appropriation for donations.

Q What donations did you specifically have to represent?

A The donations for scientific purposes. For example, to the Adolf Bayer and the Emil Fischer and the Justus Liebig societies, which I mentioned on the first day of my examination. Also to the so-called Research Committee "Forschungsgemeinschaft", that was the successor of the "Emergency Committee of German Science" after the first World War was lost; to the Kaiser Wilhelm Institute; and several other institutes, and so forth. Also donations to the German Chemical Society for the purpose of the publishing of the handbook of inorganic chemistry. These donations were originally loans. In 1944 they had reached the amount of two and a quarter million marks, and on my Application they were then written off as unprofitable.

Q In Book 91 the prosecution has submitted various documents which

prove that payments were made to the banker Von Schroeder, which were intended for Himmler. These are Documents NI-12400, Exhibit 1585, English page 23 of the document book. Also NI-2256, Exhibit 1594, page 40 of the English document book; and NI-3857, Exhibit 1595, page 91 of the English book. You have looked at these documents?

A Yes.

Q Are these donations which were approved by the Central Committee?

A No. These donations were not discussed and not approved by the Central Committee.

Q Do you recall that exactly?

A I can see that from the fact that the approved donations were always announced by Geheimrat Schmitz at the Vorstand meeting on the next day. I have looked at the minutes from the time in question and I have seen that none of these donations of 100,000 marks each is mentioned.

Q The prosecution, in the same book, that is Book 91, has submitted NI-8307, Exhibit 1595, which are letters of thanks from Von Schroeder to the defendant Schmitz and Buettfisch for payment of 100,000 marks. Did you know that Dr. Buettfisch belonged to the Himmler Circle?

A No, I learned that only in 1945 in Kramsberg.

Q Do you know of any other donations to the SS which were approved by the Central Committee?

A To the best of my recollection, no.

Q How about payments for birthday presents to Goering in 1941 to 1944?

A The same is true here. They were not decided upon by the Central Committee. They were not discussed by the Central Committee.

Q Professor Krauch, when examined by my colleague Berndt here, said that he assumed that Geheimrat Schmitz discussed these presents with members of the Vorstand. Did he discuss them with you?

A Was that not when he was examined by Dr. Boettcher? I don't think

it was by Dr. Berndt. I don't remember exactly. At any rate Mr. Schmitz did not discuss the matter with me.

Q In the trial brief, Part 1, page 98, a payment is mentioned to the NSV for the Sudeten-German relief for the purposes of the Sudeten-German Free Corps. The prosecution alleges that this amount was paid by the Central Committee after the matter was discussed with Schmitz.

A I refer to Document NI-1318, Exhibit 834, Document Book 46, German page 39.

Q That is the English page 36, Mr. President.

A In this exhibit there are several letters. On the fourth page in the German document book we see that this payment, contrary to the contention of the trial brief, was not discussed in the Central Committee. It is said quite distinctly here that this is merely a statement of the Central Committee Office, not the Central Committee itself. The members of the Central Committee and some other Vorstand members were merely informed by the Central Committee Office that, after consultation with Geheimrat Schmitz, it had paid out that sum.

Q Again on page 98 of the trial brief there is mention of a payment of 500,000 marks to the Sudeten-German area. Did you know of that?

A Yes, I know of that, from the trial brief and from the documents. But this payment again was not made after approval of the Central Committee. Document NI-2795, Exhibit 1046, Document Book 51, German page 28 --

Q That is English page 122, Mr. President.

A The payment of this amount was undertaken by the Central Committee on the basis of a telegram sent by Geheimrat Schmitz on 30 September 1938 to Hitler.

Q Would you please comment on the amount 855,679.46 RM, paid to the NSV? This is in Supplement 12 of Document NI-9200, Exhibit 80, Document Book 4, German page 48, English page 26.

A In the record of the Vorstand of 28 May 1938, I have seen that at

the suggestion of Reichminister Schacht, 250,000 marks were paid out for Austria, while 100,000 marks and 500,000 marks which we have just been talking about, were destined for the Sudetenland. All payments were made to the NSV, or the Winter Relief, and amounted to a total of 850,000 marks, which differs only 5,614 odd from the above-mentioned sum, so that there are only some minor payments in addition.

Q Can you mention another so-called donations which did not have the character of a real donation but which was a large sum?

A Yes, in the minutes of the eighth meeting of the Vorstand of 26 January 1939, I found a report about the preceding Central Committee meeting. It was mentioned there that the total German industry had decided, on the occasion of the fiftieth birthday of Hitler, to make a contribution to him for the House of Architecture in Munich. At the later tenth Vorstand meeting of 15 April 1939, Geheimrat Schmitt reported that the industrial donation for the House of Architecture was fifteen percent of the amount of the annual Adolf Hitler donation, for the four years 1939 to 1942, which, on preliminary calculation, would amount to about 650,000 marks. This was to be spread over four years.

Q Mr. President, that is in Supplement 21, Document Book 4, German page 57, English page 10, as to these payments which have been mentioned which amounted to a total of 691,175 marks.

THE PRESIDENT: This would be an appropriate place, I think, Dr. Kalte, to suspend for lunch. The Tribunal will rise until 1:30.

AFTERNOON SESSION

(The Tribunal reconvened at 1330 hours, 2 February 1948)

THE MARSHAL: The Tribunal is again in session.

DR. NELTE: (Counsel for defendant Hoerlein): If the Tribunal please, before I start the examination I should inform the Court that the sentry in this courtroom prevented me from talking to Professor Hoerlein. It was only one minute before half-past one that the sentry permitted me to talk to Professor Hoerlein, but I was, therefore, unable to talk over with him what I could have done.

THE PRESIDENT: The Tribunal will take note of that situation and endeavor to avoid it in the future.

Dr. Nelte, I am advised by the Marshal that that was due to an unfortunate misunderstanding of fact. The guard that interrupted your conference thought that the defendant was in the course of cross examination. It is an error for which we regret and I hope it won't occur again.

DR. NELTE: Now, I should like to continue with my interrogation concerning donations and let me terminate this with a general question.

HEINRICH HOERLEIN - Resumed

REDIRECT EXAMINATION (Continued)

BY DR. NELTE:

3 In the trial brief there is on page 14 of Part I mention made of I.G. allocating a sum of over 40 millions between 1933 and 1944 to the NSDAP and similar organizations and only the allocation for the Winter Relief Campaign and the Adolf Hitler Fund were based on definite sums which had been fixed by certain economic agencies.

I have reference to Document 9200 which is Exhibit 80, to be found in Document Book IV on page 31. I should like to

hear your comments on this.

* The list which this exhibit contains shows a total of, roughly, 39.6 millions. If you deduct from that the compulsory contributions such as the Adolf Hitler donation, of 16.7 millions and the Winter Relief Campaign amounting to 16 millions, you arrive at the total of 10.9 millions.

* I think you made a mistake here. The Adolf Hitler donation, as I have noted, on March 12th amounts to 12.7 millions.

A That is correct -- 12.7 -- and the Winter Relief Campaign amounts to 16 millions. Therefore, there is the sum of 10.9 million left. Then there is a sum of 5 millions for the Association of German Industry. These 5 millions amount to a definite anti-Nazi contribution to support young research workers whom the government or the Party did not like. I can state this with certainty because I was on the committee of this institution which was to distribute the sum in connection with that association.

— If you deduct this sum of 5 millions, you arrive at a balance of 5.9 millions. With the roughly 700 thousand marks listed here as a contribution to the House of German Art, we are concerned -- as mentioned before and, as can be seen from the records of the Vorstand Meetings of 26 January and 15 April 1939, with a sum allocated by German industry for the House of Architecture in Munich.

Now, we have arrived at the sum of 5.2 million marks. Other contributions also might be proved to have been compulsory. Let me mention, for instance, 250 thousand marks sent to Austria at the instigation of Schacht which may be seen from the minutes of the Vorstand meeting of 12 June, 1938, but I will not deal with any more details here and merely arrive at the figures

of 5 million marks for a period of 12 years and 20 plants which are listed. There you arrive at an average of 20 thousand marks per year and plant, and nobody, I am sure, will call that a considerable financial allocation such as the trial brief asserts. Compared to an annual turnover of between 1, 2 and 4 billions, this 400 thousand marks per annum for 20 plants together amounts to 0.3 or 0.4 per mille or even less -- 0.2 per mille of the turnover, for the so-called voluntary contributions.

In actual fact, this was what we called "voluntary compulsion", as Party circles would ironically refer to it.

DR. NELTE: If the Tribunal please, I have now reference to affidavits submitted by Dr. Rudolph Dix, contained in Document Book Schmitz II, Schmitz Document 24, on page 36, Schmitz Document 25 on page 40, Schmitz Document No. 26 on page 42 and Schmitz Document No. 27 on page 45. As the Tribunal has suggested, I shall refer to it merely, without submitting it into evidence myself.

MR. SPRECHER: We are a little confused sometimes as to whether or not an exhibit is meant or whether or not a document number is meant. I was wondering if we could have that understanding. We had the same trouble after we went back to our notes last Friday.

THE PRESIDENT: What is meant here, Dr. Nelte? Are you referring to Schmitz exhibit numbers or Schmitz document numbers?

DR. NELTE: I think they are identical. The document numbers and exhibit numbers are identical in the case of Dr. Dix.

THE PRESIDENT: I now recall that that was true in the case of Dr. Dix.

2 Now, under the Count I of the Indictment the Prosecution deals with the production of poison gas. In the last paragraph of this chapter on page 41 of the first part of the trial brief it says:

"The contribution given by I.G. Farben to the preparation of chemical warfare included research and development of D-Lost, O-Lost, Tabun, Sarin, N-Lost, Adamsite and Phosgene."

You are not brought into connection with production but the Prosecution asserts you participated in the preparation of poison gas warfare, their explanation being that Tabun and Sarin were researched into and developed in Albrecht.

DR. HEATE: If the Tribunal please, I submit in this connection as Exhibit 32 Hoorlein Document No. 42. This is an affidavit and amounts to a correction of points 12 to 22 of Prosecution affidavit, Hoorlein NI-6787 which was offered as Exhibit 296, the explanation in this case being that the circumstances are described under which this affidavit was brought about.

From this document I shall not read anything. I merely have reference to it. Details will be elucidated during the interrogation which I am now about to enter.

MR. SPEECHER: Mr. President, we don't know what document book is being spoken of and we are not able to follow what Dr. Nolte has in mind. Mr. Minskoff and I were under different impressions as to what was the intent and what part of the document books are being referred to, and so on.

THE PRESIDENT: Now, let us see if we can help you. As I understand the record -- not to repeat too much again -- Dr. Nolte is offering his Document 42 as his Exhibit 42, which he says is for the purpose of correcting errors in the Prosecution's Exhibit 295. Now, is that right, Dr. Nolte?

DR. NOLTE (Counsel for defendant Heerlein): Quite so your Honor, and this affidavit is contained in Document Book 3, on page 1.

THE PRESIDENT: That is the Prosecution's Document Book 3, at page 1? Oh, in your own --?

DR. NOLTE: In the Heerlein Document Book 3 on page 1.

THE PRESIDENT: Very well. Now, Mr. Prosecutor, does that answer your question?

MR. SPEECHER: Yes, thank you very much.

THE PRESIDENT: Go ahead.

BY MR. NOLTE:

Q Professor Heerlein, what was the task of the Elberfeld plant of which you were in charge?

A What we did was research work, development, and production of the synthetic drugs and insecticides.

Q Then it was a producing plant and also a research plant, was it?

A That is true.

Q What do you mean by a research institute?

A Research institutes comprise all chemical and medical laboratories, concerning which I have given a great many details on Friday afternoon.

Q Did you at any time deal with research work into poison gas at Elberfeld?

A I did not.

Q How was it that representatives of the Army Ordnance Office department "Wa Pruef 9" visited you in 1935?

A We had in the Institute for Social Hygiene at Elberfeld for the entire I.G. Farben Combine.

Q Why was it that the Army Ordnance Office was interested in the Institute for Social Hygiene?

A That institute looked after all plants of Farben. They tested all new products to which, from a physiological point of view, objections might be raised, and they tested particularly their toxic qualities.

In particular, they wanted to insure that the employees of I.G. as well as the customers of I.G. would not suffer harm.

Q Were you in charge of that institute?

A From an organizational point of view, yes. The man in actual charge was Professor Gross. The institute had its own budget; expenses were not handed over to the Pharmaceutical Department but were dealt with centrally.

Q I do not wish to go into the details of this institute, its tasks, and so forth, because Professor Gross, as a witness for the Prosecution, has already testified about these things. You remember Professor Gross's testimony, don't you?

A Yes, I do.

Q Let me ask you whether there is anything you would like to add to Professor Gross's testimony which you still remember?

A No.

DR. KHELTE: Mr. President, in Document Book 2 for Henricin, I have included, on page 28, the testimony of Professor Gross which he gave before this Tribunal. I have added this to the affidavit which Professor Gross put at the disposal of the Prosecution. On the assumption that the corrections to the affidavit will be more easily comprehensible to Your Honors if I supplement the original affidavit by these

corrections with the result that a new version of the testimony by Gross will be offered as Hoorlein Document No. 64, although I am submitting this only for identification as Exhibit 33, because the testimony, after all, becomes clear from the Prosecution Document M-6927, Exhibit 656, as well as from the testimony by Professor Gross, which may be found in the English transcript on page 2714 through 2722.

THE PRESIDENT: Now, just a moment, Dr. Nolte. I thought you misstated a page. As I understand, you are now offering your Document 64, found on page 36 of the English document book, as your Exhibit No. 33 for purposes of identification only.

DR. NOLTE: Yes.

THE PRESIDENT: Very well.

Something from you, Mr. Prosecutor?

MR. SPENCER: Yes, Mr. President; so long as documents are brought into a document book with the real intention of offering them, then of course we have no objection. Now, if documents are brought into a document book to be marked for identification in order to avoid a well founded objection, then we think that the matter requires us to bring it to the attention of the Tribunal.

May I describe what happened here with respect to this affidavit?

I have talked it over with Dr. Nolte. Originally we obtained an affidavit from Professor Gross which was introduced in evidence. With our permission and in very good form, of which we have no criticism, Dr. Nolte as well as other Defense counsel then talked to Professor Gross before he was put on the witness stand and cross-examined about that affidavit. At that time I suggested to Dr. Nolte that the corrections which Professor Gross then said he would like to make, after his discussions with Dr. Nolte and other Defense counsel, be incorporated in a new affidavit and submitted, and the earlier affidavit withdrawn.

Dr. Nolte said he would take that under advisement. The morning that Gross appeared here in court Dr. Nolte said that unfortunately

other Defense counsel would not agree to the new affidavit going in without cross-examination — and the document was also not translated — and therefore we had a rather lengthy cross-examination.

Now, that cross-examination pursuant to that affidavit, it seems to me, closed that subject, at least —

THE PRESIDENT: I don't know why. I don't see any reason why the Defense was precluded from getting another affidavit in its defense, or a dozen affidavits as far as that is concerned.

MR. SPEECHER: Perhaps we don't understand one another, Mr. President. This does not pertain to any new material by Gross whatsoever. This pertains only to the original Gross affidavit, Exhibit 656, and the cross-examination of Gross which Dr. Helto then accomplished in great detail and which took several hours of this court's time. And now what this is is Dr. Helto's version and Professor Gross's version of what that cross-examination accomplished with respect to the original affidavit.

THE PRESIDENT: Well, the affidavit speaks for itself and we surely shall not take time out in the course of this trial to determine whether the matter embraced in this affidavit has already been covered in whole or in part in a cross-examination.

Now, here is the answer, it seems to me, to the whole thing. Dr. Helto has stated to the Tribunal that he is not offering this as evidence but he is offering it for identification only, in connection with his interrogation of the defendant. Now, there is no impropriety in that that I can see.

If he is going to burden the record by offering an affidavit that is, in substance, the same thing as the cross-examination, that is another matter; but he has said to us that he is not offering it into evidence, at this time at least.

Now, in other words, here is an affidavit from Gross: whether that is all or part of the testimony of Gross, it is certainly no impropriety in handing that affidavit or directing the attention of the

witness to that affidavit for the purposes of his interrogation.

MR. SPEECHER: Well, I had not so understood his purpose.

THE PRESIDENT: I may have misquoted what I understood Dr. Helto
to say, but I understood him to say that he was offering it for identi-
fication only, and of course we all know that it is offered in
connection with his interrogation of the witness on the stand.

Now, if there is any misunderstanding in that connection,
I certainly would like to know.

MR. SPRECHER: First, not all of the affidavits that Dr. Nolte has offered so far have been directly in connection with the examination. Dr. Nolte has told us that he is going to offer all his documents at the same time he happens to be interrogating Dr. Hoerlein. But on the other points, the purposes of introducing this affidavit have been discussed with us a long time before Dr. Hoerlein was on the stand.

THE PRESIDENT: Well, of course the Tribunal doesn't know or care anything about the negotiations between you, gentlemen, except when it becomes a matter of controversy in the course of the trial.

Dr. Nolte, was I correct in assuming that you are having this document marked for identification only at this time?

DR. NOLTE (Counsel for defendant Hoerlein): Only for identification, your Honor.

THE PRESIDENT: Then go ahead with the examination.

BY DR. NOLTE:

Q. Concerning the question whether in Elberfeld research work into Tabun was done, we had a witness of the Prosecution, namely, Dr. Schröder. Do you recall the testimony and do you also have the affidavit by Schröder? Have you read it? You were ill at the time.

A. I was undergoing an operation at the time in the hospital. Therefore I was not present in court when this witness was heard. When I returned from the hospital, however, I read the transcript and I found that in the German transcript, on pages 2236, two words were missing, and that on page 2238 it should read "Affidavit by Professor Gross," and not "Affidavit by Professor Hoerlein."

Q. These corrections, Mr. President, I have submitted to the Secretary General and I assume that meanwhile the record has been rectified accordingly.

Did this have any influence on Schröder's testimony?

A. The two words anybody will be able to add, whereas it does make a difference whether it is an "Affidavit by Professor Hoerlein" or an "Affidavit by Professor Gross."

DR. NELTE: If your Honors please, this is the testimony by Dr. Schrader which may be found in the English transcript on page 2239.

BY DR. NELTE:

Q. Is there anything you would like to comment on in addition to Schrader's testimony? Are there any objections you wish to raise?

A. Apart from the remarks I made just now, there is nothing I have to add.

Q. You have reference there again to what the Prosecution witness Dr. Schrader said.

A. Yes, indeed.

Q. What were the reasons which led to Dr. Schrader's transfer in 1937 from Leverkusen to Elberfeld?

A. I observed the development which Dr. Schrader's research work into insecticides took. Dr. Schrader himself belonged to a dyestuffs laboratory in Leverkusen. Research into substances which he worked on was done in a biological laboratory in Leverkusen of which I was in charge. This is the reason why I was being informed so precisely about Dr. Schrader's research work. I noticed the interest which was shown by the Army Ordnance Office in these substances. I wished to retain control of highly toxic substances so that I could prevent Farben from being dragged into the development of these substances by the Army Ordnance Office.

Q. Was it clear in 1935 that the Army Ordnance Office was interested in toxic substances because chemical warfare agents might be developed therefrom?

A. Yes, I realized that.

Q. What were the reasons why you took the attitude you did at the time?

A. There was nothing I could object to about the legal prescriptions. What the Army Ordnance Office insisted on had its basis in law and had I refused I would have faced dire penalties. The various penal laws starting with a decree of 28 February, 1933, issued, in other words, four weeks after Hitler had entered the Government, were mentioned by both

Professors Schroder and Gross.

Q. Let me make one thing clear here. The demands by the Army Ordnance Office--were they demands to report them to the Army Ordnance Office any toxic substances of higher qualities?

A. They confined themselves to that demand, namely, to be informed of any developments of highly toxic substances.

Q. Now, in your conference with the representative of the Army Ordnance Office, I believe it was one Herr von Sicherer, or on any other occasion, was mention made of the fact that they were interested in developing chemical warfare agents in the event of an aggressive war?

A. No. Up to a point they said the very opposite. Dr. von Sicherer was a member of the Department for Protection Against Gas in the Army Ordnance Office. He mentioned that one should test as many toxic substances as possible against gas masks and should test certain substances as warfare agents, should develop them, so that in the event of gas warfare tested protective means would be available against all sorts of substances.

Q. Were there no misgivings from the point of view of international law concerning this interest in developing chemical warfare agents?

A. I mentioned before that development was not our business. I also stated that I, as a matter of principle, was opposed, and still oppose, war as such, but particularly do I oppose gas warfare. It is my belief, however, that all nations made preparations in this respect for the event of war, in order to protect themselves against a gas war started by a potential opponent, and in order to have the same means to fight back. This probably is the reason why, in the Geneva records, of 17 June, 1925, only gas warfare was outlawed. That is to say, the use of chemical warfare agents in war was declared illegal under International Law, but not the preparation thereof, that is developing and producing chemical agents.

I might also point out that a number of big powers were not a party to this record. Russia, for instance, did not sign or ratify this record, whereas the United States and Japan signed it but did not ratify it. There-

fore, there were no misgivings as to international law which occurred to me, namely that my country in the event of a gas war should make preparations if a potential foe should use chemical warfare agents.

In this connection I would like to have reference to the well-known article by the former United States Secretary of War, Robert Patterson, entitled "Chemists' Military Horizon." May I quote a few sentences? This is a paragraph entitled "Gas Warfare."

MR. SPRECHER: Mr. President, this is the first time, I think, we have risen to make a possible objection in the cross-examination by a Defense counsel of his own client on the stand. And it is with a certain reluctance that we bring up the point. But if the questions are not precise and directed to specific points, and then through the supposedly voluntary statements of the defendant himself, we start to get into opinion material published since the war by Allied governments, You can see, I am sure, how impossible it makes the function of the Prosecution with respect to attempting to meet direct, simple questions of the Defense attorney which are intended to bring out relevant material for which the defendant on the stand himself is a witness to the facts.

THE PRESIDENT: Well, now let's see. Forgetting the purely technical approach, are you objecting to the defendant quoting the article by the Secretary of War?

MR. SPRECHER: Well, there is no foundation laid so we could possibly know when it was published, and things like that.

It makes it impossible for us to perform our normal function.

THE PRESIDENT: Very well. We will sustain the objection. And Dr. Nelte, please form your question to directly ask for the information which you are seeking to produce by the defendant, and then the defendant will please pause to see whether the Prosecution wishes to object to the question.

BY DR. NELTE:

Q. Professor Hoerlein, I would like to become familiar with the deliberations which were decisive for you in formulating your attitude

towards chemical warfare, as such. You need not only describe your own deliberations, but you could also refer to whatever you heard from other parties on this point, read or heard, but make it a part of your own conviction. Do you see what I am getting at?

A. Yes.

Q. Well, please give me an answer.

A. My main intention was, through quoting those few sentences, to make definite statements on German chemical warfare agents which would amount of a correction; and these things reached the public in the I.M.T. trial through Speer's testimony.

Q Can you tell us this, Professor. The only thing you must not do is to quote Mr. Patterson's statements.

A Very well. In the IMT trial —

THE PRESIDENT: Just a moment. I think we are getting in deeper instead of getting out. The Tribunal has not yet ruled whether the witness may or may not quote the Patterson statement, for two reasons. The first is there has been no question that directly asked for it, and the second reason is that the Prosecution has not been given the opportunity of making an objection.

If you are interested, Dr. Melte, in having the defendant quote the Patterson article, ask for it directly, give Mr. Sprecher an opportunity to object, and then we will determine whether or not, in the light of your question and his objection, whether or not it should be answered, if you wish to pursue it. If you wish to abandon it, that is entirely satisfactory.

BY DR. MELTE:

Q I have asked the question, what the attitude was he took towards what is known as "chemical warfare".

A I had the same attitude which was expressed in foreign countries and which has particularly been finally expressed by a Secretary of War, Patterson.

A Mr. Patterson says, "Indeed,—"

THE PRESIDENT: Now we are down to the issue. Now let's hear the objection.

MR. SPRECHER: Now if Professor Melte would do us the favor, which I am sure he knows I have in mind, namely that the date of this publication be put forward, so we —

THE PRESIDENT: Just a moment. The Prosecution is within its rights in asking a preliminary question, — or asking Dr. Melte to ask a preliminary question — in order to determine whether or not it does wish to object.

The suggestion is, Dr. Melte, that you identify the time of the statement of Mr. Patterson. If you will do that, then we will be getting one step nearer the issue here.

THE PRESIDENT: The Tribunal may save time. Mr. Witness, are you able to tell us the source of your information, and of the Patterson article, and the date when the statement is supposed to have been made?

THE WITNESS: I beg your pardon, Your Honor. I have omitted to do that. It is, "Chemical and Engineering News," Volume 24, No. 8, and the date is the 25th of April, 1946.

THE PRESIDENT: Now, does the Prosecution wish to object?

THE SPEECHER: We object on the grounds that it cannot have affected this witness' conduct, before 1946. It is brief material, Dr. Melte can put it into his brief, and it should not come in through the witness instead.

DR. MELTE: If Your Honor please, it seems to me that Professor Hoerlein has misunderstood me. I am now asking him:

Q Are the deliberations and statements which State Secretary Patterson expresses in the magazine, which you have just mentioned, the same deliberations, and do they reflect the same attitude toward chemical warfare which you had formed yourself, and still have?

A They are absolutely identical. I congratulate the German people and humanity just as Mr. Patterson does, that war has ended without one gas bomb being dropped or a gas shell being fired, and that is exactly what I had the intention to quote.

THE PRESIDENT: Dr. Melte may I suggest that this inquiry has progressed to the point where I think your client has had the opportunity of expressing rather definitely his own convictions and views on a subject that is a subject of inquiry here.

Now, may I suggest that it would serve no good purpose by getting into a technical controversy, over the admissibility of the statement of the American Secretary of War. You have the source of it,

if it is a matter of which we take judicial notice and knowledge, from a public document or a statement of some man in place of authority, you are perfectly at liberty to quote it for us, in your brief, and have the full benefit of it, so I think that this matter has been pretty well exhausted now.

DR. MELTZ: Very well, Your Honor.

Q Now can you give us facts which decided you on your attitude against participation in developing toxic substances?

A Yes, I can give you facts. On several occasions, particularly toward Dr. Von Sichter and Professor Wirth, who were working on these problems in the Army Ordnance Office, I expressed to them that it was the goal of my life to help, and to heal, but not to develop substances to kill. I refused an assignment to develop these things, and I refused to work in the field of chemical warfare.

Elberfeld was never given or asked for one penny for carrying out an official assignment that is, to report toxic substances, although the plant, thereby, suffered damage, if the use of these substances as insecticides or as healing drugs, or as intermediates for drugs, were omitted.

DR. MELTZ: If the Tribunal please, as further evidence I now submit Hoorlein Document No. 32, which is Document Book 2, on page 43. This is an affidavit by Professor Dr. Wirth. I offer it as Exhibit 34. Dr. Wirth says that the plants had to report toxic substances which they came across, to the Army Ordnance Office itself. The further development of these substances, if they were found to be suitable, was in the hands of the Army Ordnance Office.

Elberfeld did not collaborate with the Army Ordnance Office concerning Tabun, and Professor Hoorlein rejected an assignment which came from the Army Ordnance Office.

The second document is Hoerlein Document No. 25, page 52 of Book No. 2. This again is an affidavit by Professor Dr. Wirth, which I beg to offer as Exhibit 35. This is a report about the official findings concerning the gas which the Poles used in Jaslo, Poland, at the beginning of September 1939.

The third document I beg to offer in this connection, is in Book 2, on page 59. It is Hoerlein Document No. 38. This is an affidavit by Dr. Von Sicherer, whom we mentioned before, and this will become Exhibit 36.

Dr. Von Sicherer was the man who in 1935, called on Professor Hoerlein in Elberfeld. He directed Professor Hoerlein's attention to the fact that under law he was obliged to report toxic substance of a higher quality which were a result of his research work to the Army Ordnance Office, and he also says that there was no order nor any arrangements made that Elberfeld was to work for the Army Ordnance Office.

Professor Hoerlein endeavored to obtain permission use the substance which he had to report for purposes of healing or as insecticides.

Dr. Von Sicherer says that it was his impression that Professor Hoerlein resented interference by the Army Ordnance Office. Testing and developing of toxic substances was exclusively in the hands of the Army Ordnance Office, Department III Pruef 9, which was the agency which was entrusted with those problems specifically.

Now as Exhibits 37, 38, 39, 40 and 41, I offer the laws mentioned in the testimony by Professor Schrader and Professor Gross, and in the direct examination of Prof. Hoerlein.

This is Document No. 58, in book 2, on page 7. Hoerlein document No. 59 is on page 13 of Book 2. Hoerlein Document 60 is on page 16, Volume 2.

Hoerlein Document 61 is on page 17 of Book 2, and Hoerlein Document 62 is on page 25 of Volume 2.

22. SPEECHER: It is only mechanical, Mr. President, I can't keep track myself of the way this is going.

THE PRESIDENT: Well, we will help you. I think we can help you.

Dr. Helte, are we correct when we say that your Document 58 is your Exhibit 37?

DR. HELTE: No, sir. Document 58 will become Exhibit 37.

THE PRESIDENT: Yes. 59 is 38 — Exhibit 38?

DR. HELTE: Quite.

THE PRESIDENT: Document 60 is Exhibit 39?

DR. HELTE: Yes.

THE PRESIDENT: Document 61 is Exhibit 40?

DR. HELTE: Yes.

THE PRESIDENT: Document 62 is your Exhibit 41?

DR. HELTE: Quite.

THE PRESIDENT: Yes.

DR. HELTE: Further, I offer as exhibit for purposes of identification — 42. This is a prosecution document MI-12333, Exhibit 1755, which may be found in Book 19 on page 46. From this extensive prosecution document, I only have reference to the remark made by Hitler on 24 March, 1933, which is an addition and explanation of the laws which I have submitted before. The remark is to the effect that "treason against the country or the people is to be punished with barbaric ruthlessness in the future." Then I beg to submit Foreign Document No. 22 on page 31 in Volume 2. This is an affidavit by Dr. Werner Messer on the handling of secret patents within Paten, in accordance with legal regulations.

THE PRESIDENT: Just for verification, that is your Document 82 and becomes Exhibit 43, is I understand it?

DR. HELTE: Exactly, your Honor.

THE PRESIDENT: Thank you.

DR. HELTE: And the last document in this series will be Document No. 65 on page 36 of Volume 2. It is the Geneva protocol concerning outlawing gas warfare. I beg to offer it as Exhibit 44.

THE PRESIDENT: Now pardon me again, Doctor. I believe that you have your entire Book 2 in evidence except a couple of documents which you marked for identification only, except your first document, the affidavit Professor Hoorlein. Is that your document -- or your Exhibit 32?

DR. WELTS: It is 32, your Honor, yes.

THE PRESIDENT: Now wait a moment. I think I omitted a page. You do still have one more page in your index of documents that have not yet been offered. I'm sorry that I misunderstood you. You have all your documents --

DR. WELTS: I have offered everything up to Document 66.

THE PRESIDENT: That is correct, now we understand.

DIRECT EXAMINATION (Continued)

BY DR. WELTS:

Q. Professor Hoorlein, in Document Book 35, we find your name mentioned once or twice. Affiant Dr. Wagner says in his affidavit, which is NI-6940 and Exhibit 616, on page 3 both in the German and English version of Volume 3. "The production of chemical warfare agents Sarin and Tabun was part of the project of which Professor Hoorlein and Dr. Schrader were in charge, and which was also kept a secret from the Vermittlungsstelle. Professor Krauch did not inform the Vermittlungsstelle on this project." Have you found this passage?

A. Yes, I have found it just now in my book.

Q. What can you tell us about that?

A. It is incomprehensible to me why Dr. Wagner should make statements on a project Sarin and Tabun if he says quite truthfully at the same time that Vermittlungsstelle was not informed about it. What actually happened was described by Dr. Schrader on the witness stand, and in the affidavits which have just been introduced by Professor Wirth and Dr. von Sicker -- it is explained in detail that in Elberfeld we were entirely unconnected with any project concerning Tabun or Sarin. All that Elberfeld did was to report highly toxic substances to the Army Ordnance Office which we had to do, two of which were developed later on

by the Army Ordnance Office into Tabun and Sarin, as they were called later on.

Q. Would you please look at page 92 of the same document Book 35? There it says in an affidavit given by Dr. Schreder, HI-6768, which is Exhibit 350, in paragraph 14 -- it says, from which I shall read: "In October 1939, Fritz Ter Meer, Heinrich Hoerlein and I were asked to call on the Army Ordnance Office. Dr. Schrader of I.G. Farben Eberfeld who was the expert on Gelsol had come across this product when he worked on problems connected with insecticides." What can you tell us about that remark?

A. It is true that Dr. Ter Meer or Dr. Schreder and I were asked to call on the Army Ordnance Office after the outbreak of war and we were told there that for military reasons it was necessary that Germany should produce chemical warfare agents. As we were short of space in Eberfeld, we would not have been in a position to produce this, which is the reason why I was not really interested in this conference. Dr. Ter Meer and Dr. Schreder were on that occasion, but certainly after the outbreak of war, informed of the existence of Tabun. As for the formulation which Dr. Schreder has chosen in his affidavit, I think it is not very clear. Dr. Schrader was not the expert, and he did not develop the product gelsol-Tabun. When he worked on insecticides, he found a substance which had to be reported by virtue of legal regulations, and was later on developed by virtue of legal regulations, and was later on developed by the Army Ordnance Office into a chemical warfare agent. This has been established by the evidence in this court.

Q. On page 151 of the same Document Book, Document HI-4707 which is Exhibit 529 -- I beg your pardon, it is--no, I am sorry, it is HI-4707. This is a note concerning a working arrangement in the field of chemical warfare. This is on page 152 of the German and you will find there the following remark: "It was probably necessary to inform Professor Hoerlein of this matter."

Will you tell us what you know of this matter?

A. I remember nothing of this matter, nor do. I believe that I was ever informed to this effect. I am quite certain that at no time did I take part in a working arrangement in the field of chemical warfare agents.

Q. In part I of the prosecution's trial brief on page 41, the affidavit NI-10557, Exhibit 619, in Document Book 35 on page 20 and page 10 of the English is referred to. This is an affidavit by Hlonek.

A. All I can remark about that is that neither Elberfeld nor my name are mentioned in the document.

Q. Before the indictment was served, you were examined as to the destroying of the files in Elberfeld referring to gas warfare agents. What you answered at the time was that this was done after a conference with Dr. Ambros. Was this supposed to mean that Dr. Ambros gave you an order?

A. On the basis of information which I have received meanwhile, I have to modify this statement up to a point. I have been given certain documents meanwhile to the effect that the destroying of top secret matters was carried out on the basis of a general order which came from the highest quarters. It may well be that I discussed the matter with Dr. Ambros but I could not state that with any certainty.

Q Defense Counsel for Professor Lautenschlaeger asks me, in order to avoid misunderstanding in the standing that highest quarters "von Hochsterstelle" should not be confused with the office Moscht. That was the actual reason why these files were destroyed in September of 1944?

A American troops stood at the gates of Aachen and news was received from Uerdingen that American tanks had broken through the weak German lines and were about to move towards Cologne. Therefore, we were part of the danger zone and it depended how you judged the acuteness of the danger. I personally thought it was very acute, as I was aware of the weakness of the German lines of defense in the West at that period of time. I think any American industrialist in the same position would have acted as I did.

Q Following up this set of problems, I would like to ask you about the Degesch problem, because here again we are concerned with the assertion, and I quote Trial Brief, Part II, on page 34: "Through Farben and ^{defendants} Degesch the/participated in the crimes which were committed in Auschwitz and Birkenau by the gassing of innumerable human beings with Cydon B." You know these facts, the statements made by the Prosecution in Document Books 82 and 83?

A Yes, I do.

DR. WELTE: These facts will be dealt with extensively by my colleague, Dr. Berndt, which I have arranged with him, and I can let a few questions suffice.

Q Did you know that I.G. Farben had a participation in Degesch?

A I knew that Farben, together with Degussa and Goldschmidt of Essen, was interested in Degesch since 1930 or 1936.

Q What did you know about the activities of Degesch?

A It was known to me that Degesch was a company for the production of insecticide.

Q What products did -- in the way of insecticides did Degesch deal in?

A Mainly methods to disinfect areas — ships, for instance, mills, mills, hulments, and so forth.

Q What were your personal relations with Degesch?

A In 1937 I was made a member of the Verwaltungs-Ausschuss.

Q What functions did you have as a member of this administrative committee, or Verwaltungsausschuss?

A I could participate in its meetings if and when I was invited. In actual fact, however, with the exception of the first conference after my appointment in '37 I did not take part in a single conference. I realized on the very first opportunity that management there was entirely in the hands of the manager whom Degussa had appointed and that the administrative committee, the Verwaltungsausschuss, was only a formal arrangement.

Q Did you gain any insight into the commercial relations existing between Degesch and Farben?

A No. Nothing was produced in Elberfeld for Degesch.

Q Did you know that Degesch sold Cyclon B?

A Yes, I did. This was a very well known product used both at home and abroad for the purposes I mentioned before. These things were both economically and hygienically of great importance.

Q Through commercial reports or in any other way, did you ever learn that Degesch — supplied concentration camps with Zyklon B?

A No, I did not learn that. The business reports did not mention this, nor was I ever informed about this through any other channel.

Q Do you know the turnover figures of Degesch concerning its individual products?

A Only in as much as they were mentioned in the business reports.

Q Could you find a reason why the turnover was increased?

A No. Only the fact itself became clear to me, and this was an entirely logical thing, particularly because of the fact that the Wehrmacht had increasing requirements. This, as I saw it, was caused by

the requirements of wartime to disinfect barracks and disinfecting certain areas in the East. I was all the less surprised as also in the case of pharmaceutical products, such as Bitigal used against Scabies, we had made the same experience.

Q Did you know anything about the so-called extermination program?

A No. I never heard anything about these atrocities.

Q Well, the Prosecution asserts in their Trial Brief, in Part III, on page 40, that — and I quote: "the defendants had many sources of information concerning the program of extermination at their disposal." And in this connection I refer you to the Intelligence service which seemed to concern the entire world.

A I can only repeat that through in no way any facts came to my knowledge from which I could make deductions as to the extermination program or the gassing at the concentration camps.

Q Did you receive information from foreign countries at all?

A Well, Professor Butenandt spoke about that this morning. I was interested to obtain as much medical information as possible from foreign countries. Thus it was that, for instance, I obtained a copy of "The Readers Digest" of December 1942. There was an article contained therein by Paul de Fruif which was full of incorrectness which I could check up. For instance, he accused I.G. Farben to have developed Atabrine together with the Nazis and the Wehrmacht in order to make it possible for Hitler to wage a war of aggression. I.G. Farben was also accused to have made it impossible for the United States to obtain Atabrine, which covers, more or less, counts 53 to 56 of the Indictment, which they have meanwhile withdrawn, and, therefore, unhappily I am afraid I can not make a statement in order to obtain a public rehabilitation. On the basis of those experiences I was highly sceptical towards all news and propaganda items from foreign countries. I did not listen in to foreign broadcasts, scarcely ever to German broadcasts. Even had I heard them, I think I would have reached the same conclusion as Mr. Justice Jackson, who in his

great speech said the following: "I am one of those who during the war treated most atrocity items skeptically and doubtingly."

Q Were you ever in Auschwitz or Birkenau?

A No, I never entered a concentration camp.

Q Did the Vorstand or the Technical Committee ever discuss gassing in any connection?

A Never.

Q Therefore, you state on oath that since 1937 you have not taken part in a single Administrative Committee meeting, that you had no knowledge of the fact that Dögesch supplied concentration camps with Cyclon B, and, finally, that you knew nothing of the gassing in Auschwitz, Birkenau, particularly with Cyclon B?

A Yes, that is what I say, on oath.

Q Now let me discuss Count II of the Indictment --

THE PRESIDENT: We will take our recess at this time.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

BY DR. MELTE:

Q. Under Count II of the indictment, plunder and spoliation, the defense, that is my colleague Dr. Berndt, will deal with some basic and fundamental questions as well as the contract with the firm Rhone Poulenc. Therefore according to agreement I shall limit myself to certain questions which concern you personally. Were you present at the negotiations with the gentlemen of the Rhone Poulenc firm?

A. Yes, the negotiations on the so-called second contract.

Q. In the main pharmaceutical conference of 11 October 1940 -- this is Document Book 59, page 37, WI 6300, Exhibit 1266 -- there have reports on his discussions with German authorities. What recollection do you have of this report?

A. The decisive consideration should be that of collaboration with Rhone Poulenc. We had collaborated with them long before the war and we knew their men personally. Above all it was expressed that the negotiations were to be carried out on a basis of private economy.

Q. Do you know anything as to whether representatives of the pharmaceutical branch of Perben, generally speaking, or specifically in the case of Rhone Poulenc, undertook any investigations to gain insight into the research and the development and the fabrication methods of the French Pharmaceutical industry?

A. The method which is largely used in Germany now to acquire so-called enemy property as booty was unknown to us. Perhaps I may mention in that connection that in Elberfeld we had the CIGS commission, that means Combined Intelligence Objective Staff in Elberfeld, in the plant for months, and we had to prepare even full copies of reports covering the last 10 years. We, on the other hand, never asked Rhone Poulenc to give us any information about compounds produced in the laboratory as to chemical constitution and the effective animal experiments. Nor did we ask for plant regulations, know-how or other information on products which were being sold. We did not attack Rhone Poulenc's scientific capacity,

and it was for that reason that the men of Rhone Poulenc could appear at the negotiations as partners with equal rights.

Q. In these negotiations was there any talk of claims for damages which were to be brought forward?

A. I do not recall anything of that effect, but at an earlier time, in 1935, between the two wars, I had pointed out the objectionable features of the French patent law quite publicly. These patent laws made it possible for our French competitors to produce things which we had patented without our having any legal claim.

Q. I now offer Document Hoeferlein 66, as Exhibit A5. You will find it in Book 2, on page 69. It is a special reprint of Professor Hoeferlein's article from the year 1935 with the heading "Inadequate Protection for German Patents in the Therapeutical Field" and deals specifically with the lack of protection under French law. That is on page 52 of the English. From your article on the lack of protection for pharmaceutical inventions in France, we see that you were of the opinion that the legal situation in France was in contradiction to the general feeling. Is that correct?

A. Yes, that is correct. I point out that literary products of the lowest quality were protected internationally, while in France pharmaceutical inventions are denied such protection although for years and even for decades they were worked up at great expense and great effort.

Q. Could you please briefly explain to the Tribunal the patent situation for pharmaceutical inventions in France, so that they may understand certain negotiations and phases of the negotiations with the French?

A. I can do that in a few words. In France drugs or pharmaceutical products could not be patented, while in the United States there is a patent for new drugs and in England as well as in Germany also production processes (the know-how) are put under patent.

Q. How do you explain this distinction?

A. The French patent law was an anachronism. It went back to the year 1844, at which time there was no synthetic drugs of an organic chemical nature.

Q. When were such synthetically produced drugs introduced?

A. In 1846 ether was recognized by a Boston dentist as a narcotic. In the following year chloroform was introduced for the same purpose. In 1869 chloral hydrate was used to produce the first soporific. Actual medical synthesis begins only in the middle of the eighties with the patent of my teacher Ehrlich.

Q. You say then that the French patent law of 1844 does not and could not consider conditions in the pharmaceutical field which did not exist at that time.

A. That is correct. Since the law contains no provisions about the processes for the production of new drugs and could not contain any such provisions, the question arose of how the law was to be interpreted in respect to production processes.

Q. The discussion about the exceptional provisions which you have cited are more a matter of clarification than a change in the law.

A. Yes, that is right. All important French experts in the patent field were in favor of patenting production processes of pharmaceutical products, while the Courts took the opposite point of view.

Q. In the article of Professor Fournault, who was an expert in the pharmaceutical field, stranglelanguage is used in favor of imitating German pharmaceutical products without any disgivings. I offer Hoerlein Document Number 66 as Exhibit 45. You will find it in Book 2 on page 62. It is an article from the book "England's Trade War and the Chemical Industry," Part 13. What do you have to say to this article of Fournault?

Does the Tribunal have this article in the document book? I just see that in Mr. Sprecher's book ---

THE PRESIDENT: Yes, it is page 45, I am told, in our book.

BY DR. WELTE:

Q. Do you have anything to say about this article or lecture of Professor Fournault?

A. My impression is that this was an expression of the war psychosis of the year 1917. I later talked to Professor Fournault and the Rhone Poulenc gentlemen about this subject on several occasions and I discovered that fundamentally they agreed entirely with our ideas.

Q. Can you give any evidence of this?

A. I think it would suffice to refer to the voluntary offer of the Rhone Poulenc firm of 5 February 1934 by which, without any legal or economic compulsion, license payment for Albutine was offered.

Q. In this connection I offer as Hearsay Document Number 67, Book 2, page 63 -- that is the German page -- I offer this as Exhibit 47. This is correspondence between Rhone Poulenc and I.G. Farben Industry in Leverkusen and Elberfeld. In this correspondence the point of view which Professor Harslain has just mentioned is acknowledged to be correct. This correspondence shows that the Rhone Poulenc firm not only orally but also materially recognized Farben's rights as inventor -- is that correct?

A. Yes, that is correct. The Rhone Poulenc firm recognized that doing away with the lack of clarity in the field of pharmaceutical patents was not only in the interest of the Germans and all other industrial countries, but above all, in the interests of the French themselves.

Q. Now, after clarifying this question we will go on to the further negotiations with Rhone Poulenc. Do you know any details about them?

A. Yes, with the aid of the documents I have obtained some information. Mr. Mann reports about a fundamental agreement on license payment for our products which they had imitated for years.

Q. This is in Document Book 59, Mr. President, in the English version page 59 — in the German page 93.

A. On this occasion Mr. Mann spoke of difficulties in the negotiations, but that in itself is a proof to me that both partners were in free negotiations — each party endeavoring to represent his interests as well as possible.

Q. Did you know the contract which was signed on 30 December 1940, Document Book 59, page 103, and in the English page 68. This is document MI 6944, Exhibit 1271.

A. Yes.

Q. It had the heading: "License Agreement Bayer, Rhone Poulenc and Specia"?

A. Yes. This is the first part of a contract involving altogether three contracts which Mr. Mann had filed at from the beginning, so that this contract can be considered only together with contracts number 2 and 3.

Q. Now, how about the second agreement? How did that come about?

A. At the end of February 1943, the leading men of the Rhone Poulenc and Specia firms, Grier, Bode and Barrand, came to Leverkusen to discuss with us the question of the new products. This was the first talk which I had with these men since the outbreak of the second world war.

Q. Now, how did these negotiations proceed?

A. Smoothly and without any difficulty.

DR. NELTE: In this connection I should like to offer an affidavit of Dr. Fritz Mietzsch. This is Hoerlein Document 69, Exhibit 48, in Book II, page 71. Dr. Mietzsch reports on the negotiations conducted by Professor Hoerlein with Rhone-Poulenc and his loyal attitude to the French contractual partner. I quote:

"The negotiations were conducted in an unusually friendly tone."

Now, what was your relationship with Rhone-Poulenc after the negotiations?

A. It was good. I never had any difficulties. On the contrary, we had confidence in one another. It would be going too far if I gave too many details here concerning the trusted and loyal relationship between the two firms. I should merely like to mention that I acknowledged the interests of the Rhone-Poulenc in the field of certain drugs. The chemical names are difficult. Perhaps, I may mention them -- sulfothiodiazole and sulfapyrimidin -- as against the German firm Schering which Mr. Butenandt mentioned this morning -- that is, against a very important pharmaceutical plants -- and in this way I helped Rhone-Poulenc to form a contract with Farben, the Schering -- and the German Hydrogenation Plant.

Q. Now, what were the personal relations with the firm Rhone-Poulenc?

A. As good as can be imagined; I should like to mention an example. Mr. Beau had asked me, if it was at all possible, to have five French prisoners of war who were mentioned by name and who were employees of his firm requested for work in a Farben plant in the assumption that

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they would be well taken care of and that we would do for them whatever we could and, above all, that these men would be able to work in the pharmaceutical field.

We went and applied to the competent authorities with the result that two, unfortunately only two of these five men of the firm Rhone-Poulenc were assigned to us. These were the only two prisoners of war whom we employed in our Elberfeld plants.

DR. NELTE: In this connection I offer by way of supplementation, and without examining Professor Hoerlein on this, an affidavit of General Director Beau of Rhone-Poulenc, Hoerlein Document No. 8 as Exhibit 49, in Book II, page 73. It confirms that Professor Hoerlein received the assignment to have a certain correspondence which had been found by the SS checked. It was a chemical business correspondence. In this correspondence Professor Hoerlein found a letter from Dr. Tréfouel, director of the Pasteur Institute in Paris. The contents of this letter would have been disastrous for Dr. Tréfouel. Professor Hoerlein gave this letter to Director General Beau, the friend of Dr. Tréfouel.

Mr. President, I now come to the gravest point of the indictment, the gravest part of the charges against Professor Hoerlein: that is, the contention that in some form he gave a suggestion or participated in criminal medical experiments. I refer to Document Hoerlein No. 42 which has already been offered in evidence in Document Book II, page 1, Exhibit 32. This document mentions Professor Hoerlein's functions in the pharmaceutical branch of Farben. By way of simplification I have asked that this document be included on page 1 of Book III.

Now, for the experiments dealt with under Count III

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of the indictment, we must on the basis of the Prosecution's case, distinguish between two different types: the vaccine experiments and the therapeutical experiments or tests.

Q. Did you, or the pharmaceutical laboratories under your charge, develop any vaccines?

A. No.

Q. Were any plants under you which developed or produced vaccines?

A. No.

Q. Did you or any one under you participate in a general conference dealing with the question of typhus?

A. No.

Q. From the record of the discussion of the 29th of December 1941 at the Reich Ministry of Interior which has been offered by the Prosecution -- this is Document NO-1315, Prosecution Document Book LXXXIV, page 45 -- we find the names of Farben members: Dr. Demnitz, Director Zahn and Neumann. Were any of these men in the plants or laboratories under your charge?

A. No, none of them. Dr. Demnitz was head of the Behringwerke in Marburg. Director Zahn was head of the Behringwerke Department in the Sales Combine at Leverkusen.

Q. You know that the Prosecution has made reference to your position as chairman of the Behringwerke A.G. in Marburg. They obviously want to deduce from this responsibility on your part for events which have any connection with the Behringwerke Marburg. What were the Behringwerke Marburg?

A. A sero-bacteriological plant at which sera and vaccines were developed and produced.

Q. Did you have anything to do with research or production carried out by the Behringwerke Marburg?

A. No, the Behringwerke Marburg were under the plants combine Maingau or Mittelrhein. Elberfeld had nothing to do either with research or production of sera or vaccines.

Q. As chairman of the Aufsichtsrat of the Behringwerke A.G. Marburg, did you not have a supervisory duty or control over the Behringwerke Marburg?

A. No, the Prosecution has made a mistake here. The Behringwerke A.G. in Marburg are not identical with the Behringwerke Marburg. The correct title is "I.G. Farben Industry, Department Behringwerke Marburg." The connection is as follows:

The Aktien gesellschaft Behringwerke A.G. Marburg formerly had the Marburg institutes and laboratories under it. On the 1st of April 1929, the Aktiengesellschaft leased the entire facilities to the I.G. Farben Aktiengesellschaft. From that time on it was merely a lessor company -- that is to say, the property of the Aktiengesellschaft was administered by it but it had nothing to do with the operation of the plants taken over by I.G. Farben, the firm name being "I.G. Farben Industry Department Behringwerke Marburg." Consequently, the Vorstand and the Aufsichtsrat of the Behringwerke Aktiengesellschaft had neither the right nor the duty to take any interest in the sera-bacteriological work of the I.G. Farben Industry, Department Behringwerke Marburg. Consequently, I as chairman of the Aufsichtsrat of the Behringwerke A.G. Aktiengesellschaft, Marburg had no organizational or personal connection with the Behringwerke Marburg.

DR. MILTZ: Mr. President, regarding Prof. Hoorlein's position as chairman of the Aufsichtsrat of the Bahringerwerke A.G. Harburg, I offer, as further evidence, Document Hoorlein No. 39 as Exhibit 50. This is the affidavit of Dr. Dornitz, the head of the Department Bahringerwerke of I.G. Farbenindustrie, in Harburg. You will find it in Book 3, on page 27.

THE PRESIDENT: We just had information now that the book is on its way up and we can make notations until the book arrives, if the Prosecution has no objection, and then mark our book. The book was delivered a moment ago, but it was IV not III, but the young lady says that III will be here soon.

WITNESS: Dr. Miltz, I would like to make a brief explanation of these somewhat confusing circumstances. I would like to add just a word of explanation as to why Harben continued the Bahringerwerke A.G. although it owned 99.9 per cent of the stock. This was a promise made to Mrs. von Bahring when the stock was bought, in the year 1929. When Dr. Mann, Senior died in 1935 at a time when Bahring's memory was attacked in the vilest way because of his Jewish wife. I volunteered for the absolutely insignificant post of the chairman of the Aufsichtsrat of the company administering the estate in order to uphold the name Bahring in Nazi Germany, since at the time I had difficulties with Gaulleiter Streicher and his friends because of his attacks on medicine. The holding of a meeting of the Aufsichtsrat and the stockholders' meeting of the Bahringerwerke A. G. was a formality which required fifteen minutes of my time annually. My salary as Aufsichtsrat chairman was deducted from my salary as a member of the Vorstand.

Q. I had already offered Hoorlein Document 39 as Exhibit 50. It is the affidavit of Dr. Dornitz, Book 3, page 27. I also offer Hoorlein Document 73 as Exhibit 51. This is in Book 3, on page 30, an affidavit of director Gerhard Zahn, who was a member of the Vorstand of Bahringerwerke A. G., Harburg -- and I assume that he still holds this position.

Both affiants testified that the Behringwerke AG had nothing to do with the operation of the Department Behringwerke under I. G. Farben in Korbach and that Prof. Haeferlein had no influence on the operation and research of the Korbach Behringwerke.

Now, to come back to the conference on the 29th of December, 1941, you know that the Prosecution attaches great significance to this conference at the Reich Ministry of the Interior. Do you know of a report on this conference? Did you receive any such report?

A. You mentioned that the Prosecution seems to attach great importance to this conference. Because of that fact I have examined all the records available to me without finding any indication that I have seen these documents before. Besides, I can find nothing in these reports that indicates any intention of such an impermissible experiment.

Q. To make it quite clear, Professor we are concerned not only with the report which was called the Eber report, but also with the reports given by Dr. Zahn and Dr. Dammitt — those are Exhibits 1606 and 1607 in Document Book 84, English pages 33 and 36.

A. Yes, and it was those reports that I studied.

Q. Was anything said at the meeting of the Vorstand about this?

A. To the best of my knowledge, no. The internal affairs as to why and how vaccines were tested and where and how therapeutical drugs were tested were never reported on at the Vorstand meetings.

Q. Do you in any way obtain knowledge of vaccine experiments in concentration camps?

A. For the first time from the reports in connection with the medical trial in Nurnberg.

Q. What do you mean by therapeutical tests?

A. The therapeutical tests, the clinical trial in contrast --

MR. LSKFF: I am not quite sure I got an answer to the question about the two other meetings -- not the Eber meetings. Did he say he did or did not read those two reports at the time? There were three reports referred to of the 29th of December meeting. You mentioned the

the two reports written by the German people. Was your answer to that you did or did not read those reports at the time? I am not quite sure I got that.

DR. HARRIS: I spoke first of all of the Riber record in the Reich Ministry of the Interior. Second, of the report of Director Dornitz. And third, of the report of Director Zahn.

DR. HINSKUPF: With respect to the latter two, was it the answer that he had or had not read them? That is the only question I am asking.

WITNESS: Regarding all three documents, I answered that in view of the significance which the Prosecution attaches -- or seems to attach -- to those reports, I studied all records available to me without finding any indication that I had ever seen any of them before.

DR. HINSKUPF: I am sorry. Perhaps I misunderstood. I thought the question had been asked that you had or had not read them at the time, not since. Is the record now that you had not read any of those reports? -- just so it will be clear.

WITNESS: No.

DR. HINSKUPF: Thank you. I am sorry.

BY DR. HARRIS:

Q. I asked you that you meant by a theoretical test, and you had begun to answer.

A. This morning Prof. Dabrowski explained the difference between a clinical test and an experiment. I have nothing to add to his explanation. I can only report that the German word "Versuch" can mean both "clinical trial" and "experiment." And those English expressions must be kept separate in order to avoid distorting the judgment.

Q. In what I.G. plants were such therapeutic drugs developed?

A. In Elberfeld and Hoechst.

Q. Was there any ordered or agreed division of research between the two plants?

A. No, the two plants worked independently, Hoechst under the management of Prof. Lautenschlager, and Elberfeld under my management.

Q. Now, was there not some business contact, some exchange of experience between Elberfeld and Hoechst?

A. We met at certain conferences with the representatives of the offices in Germany too, and also there was a certain exchange of opinion about the preparations undergoing clinical tests. We tested our clinical preparations immediately at Elberfeld, while Hoechst performed certain tests themselves first, and then sent the preparation to Leverkusen for testing on a broader scale.

As to the reports which the scientists sent out, we received copies not only for the Elberfeld preparations but also, from a certain stage on, of the Hoechst preparations too-- from what stage, of course, I cannot say exactly. Then we discussed these matters at a main conference if the tests promised success, so that the same of the product could be considered.

Q. Is it correct that Hoechst was informed about the Elberfeld products undergoing clinical tests and, vice versa, that Elberfeld was informed about the Hoechst products?

A. I assume so. This question was not investigated by me in detail at the time, of course; that was a comradely collaboration, and Prof. Lautenschlaeger and I of course were not interested in determining whether these letters reached the other office or not.

Q. I am interested in this. On the basis of this information which was given out on the basis of these reports which you received from the Hoechst Plant, could you object, or could you express misgivings to Hoechst or was it just a question of informing you?

A. It was a matter of information. I had no right of supervision or control over the Hoechst Plant. We were colleagues who were working in the same field.

Q. Now what happened if a drug was developed and the expose was prepared? Please consider in your answer that Professor Butenandt has already touched upon this question.

A. Yes. Then I will be very brief. Elberfeld would then send the drug and the expose to Leverkusen to the Scientific Department for transmittal to suitable doctors and clinics, who would give them a test, a clinical trial, not an experiment, on sick persons.

The idea was to help these people, these patients, with the new drug. As I have already indicated Hoechst performed the first clinical tests themselves, and then gave the new product with a memorandum containing information comparable to the Elberfeld Expose, to the Scientific Department in Leverkusen, if these first tests had been favorable.

Q. The Prosecution frequently uses the term, "Leverkusen" or "Farben-Leverkusen", and they present Leverkusen in connection with your name in the trial brief. For example under paragraph 139 and 152, Section 3 of the Trial Brief.

Since the name, "Elberfeld" does not occur in Part III of the Trial Brief at all, it seems to me to be important to avoid misunderstanding, for you to make it clear what I. G. Leverkusen means.

A. Leverkusen is one of the main plants of Farben. Before the merger, that is before 1926, Leverkusen was the seat of the administration of the former Friedrich Bayer Co. and after the merger, it was the head of the works Combines, Lower Rhine. On the basis of the big inorganic department, numerous plants intermediate products and dyestuffs plants were built up. Of other plants for finished products, there were the

photographic paper factory, and the pharmaceutical plant, for tablets and capsules and for packing. The pharmaceutical products which were finished in these plants and put into form suitable to be put on the market, generally came from the Elberfeld plant. Some of them came from the plants of the intermediate products department at Leverkusen. Plants for the production of sera or vaccines, are neither at Leverkusen nor at Elberfeld. Leverkusen includes, of course, an extensive technical department, and the necessary commercial and administrative department for the operation of the plant. All of these departments altogether form the Werke Combino, Lower Rhine.

In addition, Leverkusen is the seat of the Sales Combino Pharmaceuticals and plant protective agents (insecticides). In Elberfeld, Leverkusen, Dattburg and Koechst, pharmaceuticals and insecticides are produced which are sold by the Ithaco-Bayer.

Q. In your chart of your positions you indicated that you were in charge of the Pharmaceutical Laboratories and plants in Elberfeld and Leverkusen.

What Laboratories and plants under you were in Leverkusen?

A. They were the tablet plant, the capsule plant, and the packing plant, the so-called, medicinal storeroom, also testing Laboratories for drugs and Laboratories for the testing and development of insecticides.

Q. How large is the part of the Leverkusen plant terrain which was under your charge?

A. The whole plant is one point four kilometers square. The sector for Laboratories and plants which I have mentioned, which I was in charge of from the technical point of view, amounted to less than two percent.

Q. How do you explain the fact that you, who had your work in Elberfeld, were in charge of this small part of the Leverkusen plant?

A. These factories and laboratories are the final, the finishing plants for the pharmaceutical products. For reasons of space they were

put up in Leverkusen because there was not enough room at Elberfeld. After Dr. Bonghofer left on the 31st of December, 1930, I was put in charge of these finishing works at which the drugs produced at Elberfeld were made into tablets, capsules, dragees, lotions, and in other forms, and were packed ready for the market. The Sales Combine thus received the products complete and ready for shipment.

Q. If I understand you correctly, in Leverkusen there were three separate parts of Farben. Would you please put that clear once more, very briefly?

A. Well, I can only repeat. At Leverkusen, there was first of all the I.G. Plant Leverkusen proper. Dr. Kuhn was in charge of that, and later his successor was Dr. Haberling; the Deputy Manager of Leverkusen was Dr. Truogelman.

Second, there was the Sales Combine Farben Bayer. It was completely independent of the I. G. Plant in Leverkusen, and had its own big administrative building. It was under director Mann, and sold in a centralized form, the pharmaceutical products and insecticides which were produced at Elberfeld, Leverkusen, Hoechst, and Ludwigshafen.

And third, there were the tablet and capsule works, etc., which I have already mentioned, which were attached to the Elberfeld plant. This was, to put it briefly, a part of Leverkusen.

Q. Did this Leverkusen part of the Elberfeld plant, if I may call it that, have any opportunity to dispose of the preparations stored at Leverkusen to outsiders?

A. No. Deliveries from this stock were made only on written order of the Sales Department.

DR. BELTZ: In confirmation of this testimony of the defendant I offer Hoeslein Affidavit 98, which would be Exhibit 52. This is in Book 4, on page 27. It is an affidavit about the extent and significance of the Leverkusen Plants under Professor Hoeslein.

In this connection I shall offer another affidavit as Exhibit 53,

that is an affidavit by Dr. Henk. This is not in any Document Book yet, but it has been photographed.

If the Tribunal please, I shall begin with this tomorrow morning. Here is the Document.

THE PRESIDENT: We will wait a moment until the document is distributed. May I ask you in the meantime, Dr. Helts to which Book would you prefer to have this attached?

DR. HELTS: It will be in Book 4.

THE PRESIDENT: All right, and will be Exhibit 53; is that correct?

DR. HELTS: But I have just handed you as Document 98, Exhibit 52. What will begin with tomorrow morning will be Exhibit 53.

THE PRESIDENT: The Tribunal will now rise until 0930 tomorrow morning.

(The Tribunal in recess until 0930 hours February 3, 1948)

Official transcript of the American Military Tribunal VI in the matter of the United States of America against Carl Krauch, et al, defendants, sitting at Nuremberg, Germany, on 3 February, 1948, Justice Curtis G. Shoke presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI. Military Tribunal VI is now in session. God save the United States of America and this Honorable Tribunal.

There will be order in the court.

THE PRESIDENT: You may make your daily report, Mr. Marshal.

THE MARSHAL: May it please your Honors, the defendants Lautenschlager, Hoffler, Krauch, Schmitz, Schneider and Illner are absent from the courtroom.

THE PRESIDENT: The defendants named by the Marshal have been excused on their own application from attendance today.

You may proceed, Dr. Helte.

DIRECT EXAMINATION (Cont'd)

HEDRICH HELTEIN, Examined.

DR. HELTE: Mr. President, on the last question with which I was dealing yesterday, and in connection with which I offered Exhibit 52. I announced that another document would be offered. That is Exhibit 112, which I offer as Exhibit 52-A so that it will not interrupt the sequence. This is a document which I obtained at the last minute. This document is very important for this part of my case because it is a map of the plant which was called I.G. Leverkusen. This document is not yet in the document books which you have and for this reason I offer it merely for identification now. As soon as it is available in the English language, I shall put it into evidence.

THE PRESIDENT: Dr. Helte, what book will you place that in?

DR. HELTE: It will be in Book 5.

THE PRESIDENT: And it is document, as I understand 112, which you will mark as your Exhibit 52-A?

DR. HELTE: Yes, Mr. President.

THE PRESIDENT: Thank you.

BY DR. HELTZ:

Q. In paragraph 152 of the trial brief it is stated "these vaccines and drugs were produced by Hoechst, the Scheringwerke in Krefeld, Leverkusen, and the Behring Institute."

Did the laboratories and plants under you in Leverkusen ever send any drugs to concentration camps?

A. The distribution of the drugs produced at Elberfeld and Leverkusen was not my affair. I did not take any great interest in it. The drugs were issued by instructions of the Pharmaceutical Sales Combine. As a rule, they were sent to the medical storeroom in Leverkusen. When there were large orders it happened that the substances were sent directly from the plant by orders of the Central Sales Office to the customer. A witness has mentioned a scabies epidemic at Auschwitz, and that was how the matter was handled in that case. By order of the Sales Combine we dispatched fourteen tons of Mitigel, enough for the treatment of 300,000 people for scabies, directly from Elberfeld.

Q. Let me interpolate a question. I am not asking you this to have an opinion as to whether shipments to the concentration camps were good or bad. I am merely asking you this to find out the organization and the jurisdiction over such shipments. But, nevertheless, I want to ask you: Did you at any time have any misgivings against sending drugs or any other preparations which were there for humanity to concentration camps?

A. I would have considered it a sin of omission, or, to use the words of the Prosecution, a crime against humanity if I had not done everything I could to help these poor people.

Q. Mr. President, with regard to the shipment of Mitigel, I should like to remind you that as Koorlois Exhibits 1 and 2 for identification I offered two documents, and now I should like to offer them as Exhibits.

THE PRESIDENT: They were marked for identification as Koorlois Exhibits 1 and 2, is that correct, Doctor? And now you are offering them in evidence?

DR. HELTZ: Yes.

THE PRESIDENT: Very well.

BY DR. BELTZ:

Q. What connections did you have, Professor, with the sales combine?

A. From the organizational point of view, the sales combine was part of the pharmaceutical branch of I.G. Farben. This branch was independent in addition to their research laboratories and the fabrication plants.

Q. Was there any factual connection between them?

A. Yes, of course, because, after all, one cannot sell drugs until they have been discovered and produced. One must imagine that a drug first has to be discovered and developed. That is the first step. That was the case in Elberfeld, for example. This first step was concluded when the results were worked up in the laboratory and self-experiments. These were recorded in an abstract which contained everything of interest to the person making a clinical test of the drug, from the most advanced state of medicine.

Q. Will you please tell us about the methods of your research and development work at Elberfeld, considering that Prof. Eutenandt has already gone into this question? What he said in general I would like to have you explain concretely for Elberfeld.

A. In the chemical laboratories at Elberfeld annually, on the basis of some working hypothesis, many hundreds of chemical substances were produced from which the therapeutical effect was hopeful. These preparations were then sent to the medical laboratories for testing by way of animal experiments. A very few of these products — perhaps one per cent — were considered hopeful for the treatment of some diseases. These were then carefully investigated from all points of view. They were tested on all kinds of animals to avert any possible danger in the clinical test. These results were then worked up in the abstract.

Q. Who was responsible for this abstract, for the subsequent clinical test?

A. The head, or the heads, of the medical laboratories concerned which prepared this exposé. I myself am a chemist, but I selected the best people for the medical laboratories whom I could find in Germany. The names of Prof. Dörner and Prof. Mikuth are world famous in connection with the sulpha drugs and nitrofurans. But Prof. Wessely, too, the head of the pharmacological laboratory, is a man whom his fellows and the German clinical research workers recognize as a good scientist and who has many friends in England and America. All three of these men are today regular professors on medical faculties.

Q. What is the responsibility internally toward you?

A. Yes, of course.

Q. Now, outwardly, towards the outside world, you hold the responsibility?

A. Yes.

Q. The exposé concludes the first step. What is the second step of a development to the finished product?

A. The preparation and the exposé are sent to Leverkusen, to the Scientific Department which is part of the organization of the sales company.

Q. Who was the head of this Scientific Department?

A. Director Dr. Mortons.

Q. What was the duty of this department?

A. This department had to pass on the products found at the laboratories in Elberfeld and Hoechst, in the way I have just described, to clinicians selected by this Scientific Department for use in the case of the symptoms indicated by the gentlemen Demagk, Kikuth and Weiss. This concerns the Elberfeld products. These gentlemen occasionally suggested some examinations to Dr. Mortons, who they thought would be appropriate for such tests.

Q. Did you have to check on or supervise this Scientific Department?

A. No, that was impossible because not only Elberfeld but Hoechst also supplied drugs to the Scientific Department and I had nothing to do with those.

Q. What were the connections between Elberfeld and the Scientific Department at Leverkusen in actual effect?

A. These associations resulted naturally from the fact that we at Elberfeld were very much interested in the results of the clinical tests which the Scientific Department carried out, sometimes for years at a time. As an example I should like to mention that the sulpha drugs were tested for three years before we put them on the market.

Leverhansen sent us the findings of the clinical test. We, in turn, gave information, told them our own points of view including certain wishes. This was done constantly, since there were always a number of preparations undergoing clinical test. Dr. Mortons also visited the Elberfeld laboratories and, from time to time, he visited me. And the necessary matters were discussed on these occasions.

Q. In paragraph 139 of the trial brief, the Prosecution contends, in a remark on page 81, that Dr. Mortons, and I quote: "was directly responsible to Hoechst...." What do you have to say about this?

A. In my opinion, Director Dr. Mortons, as head of the Scientific Department, was himself responsible for the correct execution of the clinical test. Like every head of a department, he was responsible for the task assigned to him. Not being a medical man myself, I report that I am a chemist, I could not assume this specific responsibility, and Mr. Mann, as the commercial man, certainly could not.

The second question as to the general responsibility -- that, I believe, is an organizational question and depends on employment relationships. Never, when Dr. Mortons was appointed head of the Scientific Department, did I have anything to do with the matter, nor did I sign his employment contract. He worked with Elberfeld as he did with Hoechst. It was a natural collaboration as existed between other offices of Farben whose fields of work had points of contact.

I should like to make it quite clear once more. Elberfeld was responsible for seeing to it that the statements made in the reports were correct and reliable. The Scientific Department was responsible for seeing to it that the testers when they selected conformed to the requirements made for this highly responsible work. The Scientific Department also had the obligation to inform us about the Elberfeld preparations and to inform Hoechst about the Hoechst preparations. There was also a responsibility on the part of the Scientific Department toward the laboratories which supplied these drugs for the clinical test. This

responsibility is not an organizational matter but arises from the natural requirements of collaboration.

Q. This concludes the second step. Now, which is the third step that leads up to production of these drugs?

A. When the clinical test was finished and had positive results, -- there were, of course, also cases where the results varied -- those positive results were reported to the Pharmaceutical Main Conference which decided to put the drug on the Market. That is, it was turned over to the sales organization. But I must remark that at this stage too we were informed of certain experiences with the commercial preparation and that at this stage too we had consultations with the Scientific Department.

DR. NEITE: On this subject which has just been mentioned concerning the question what connections existed between Prof. Hoerlein and the Elberfeld plant on the one hand, and the Leverkusen on the other hand; second, what was the course of development of the drugs up to the clinical test by the Scientific Department at Leverkusen; and, third, what was the relationship between Prof. Hoerlein and the Elberfeld plant with the Scientific Department in Leverkusen; I offer as further Exhibit Hoerlein Document 99, as Exhibit 53, to be found in Book 4, on page 29. This is an affidavit of Profs. Demagk, Kikuth, and Woese. I offer it without reading from it. The gentlemen confirm what Prof. Hoerlein has testified here.

I then offer Document Hoerlein No. 40 as Exhibit 53. You will find it in Book 3, on page 32. It refers to the statements of Profs. Demagk, Kikuth and Woese on the same subject.

Exhibit 53 refers to the relationship between Elberfeld and the Scientific Department in Leverkusen, but this document, Exhibit 54, contains a description of the development of the new drugs.

Q Professor, you said that the Pharmaceutical Main Conference was the office which decided to release drugs. What was the Pharmaceutical Main Conference?

A The Pharmaceutical Main Conference was what the Prosecution in its basic information in Volume 1, Page 21, has called the "Mixed Committee". It says there, however, a "a considerable number of matters requiring coordination between the Commercial leaders of the Sales Combines, and technical leaders from the Sparten and the main plants, was worked out through the so-called Mixed Committees".

Q Why was the Pharmaceutical Main Conference a "mixed committee"?

A All plants and the sales combine were represented on it, that is, all of the offices of any importance for this Pharmaceutical branch, that is, the scientists, the production people, the advertising people and the sales people.

Q What was the purpose of this Pharmaceutical Main Conference?
To make this matter as brief as possible, I shall refer to the affidavit of Dr. ter Meer. It is in Document Book 12, Exhibit 534, NI 5187, German book page 107, No. 7; in the English, page 127. Will you just state this briefly?

A This is a statement of 8 Vorstand members, who commenting on job sheets at Kranzberg, stated as follows:

"The Pharmaceutical Main Conference is the Conference of all directors of the Pharmaceutical Department of Elberfeld, Hoechst and Leverkusen (Scientists, production men, advertising men and salesman) presided over by Professor Haeferlein. It received reports on new products, the testing of which, in the medical laboratories, have been concluded, as well as reports of the results of the clinical tests of the products. It made decisions as to putting these products on the

market and was informed about the state of production and sales, as well as about questions of package and licenses".

Q Professor, I have got here the testimony of the witness, Dr. Paulman in cross-examination, which is on page 2132 to 37 of the German record, and page 2138 and following of the English record, and I shall hand it to the Tribunal now for purposes of simplification. I shall merely mark it for identification so that the Tribunal will have to to-
gather with the other evidence.

I ask you, Professor, was Dr. Paulman a member of the Pharmaceutical Main Conference?

A Yes, since he was appointed a Director.

Q Is what Dr. Paulman says in his cross-examination, your opinion too?

A Yes.

DR. WELTE: I now offer Hearlein Document No. 34 which is in Book 3, page 10, as Exhibit 56.

MR. SPEECHER: Mr. President, I did not understand that Dr. Welte actually assigned any exhibit number to the Paulman testimony. I realize he wanted to do it for identification.

While we are on that point, it seems to me that the very record of this trial is something which is always before Your Honors, and I merely point out that from the point of view of reproduction we could get into an awfully large, and possibly vicious circle from the point of view of burdening the administration, if we started to reproduce parts of the transcript of this case for exhibit, for identification, or otherwise.

THE PRESIDENT: Well, that does present a problem. However, we can see some point in counsel wishing to have particular evidence considered in connection with his document books. It just calls for the exercise of a very sound and wise discretion on the part of counsel as to how much value he attaches to it, and how much of a burden it will impose upon the processing agencies. After all, we are all interested

and concerned in not being delayed in the getting of documents. It is hardly a matter that the Tribunal would feel like issuing a directive concerning.

I think perhaps counsel can work that out better without any intervention on the part of the Tribunal.

In that connection, Doctor, where is the testimony that you have referred to in your Book 5, to be found? What document number does it bear?

DR. NELTE: It is in the English record, page 2138 and following. The excerpt which I have offered is in Book 3, page 21.

I should like to offer this document for identification as No. 55. I believe that this is the only time that I shall offer an excerpt from the record.

THE PRESIDENT: Well that may be done. Will you please check the use of your Exhibit No. 55? I am of the impression that we had already used that number, but I may be mistaken. So you do not get a duplication of numbers, perhaps the Secretary can tell you whether or not you have used 55 on previous documents.

DR. NELTE: It is Exhibit 55. In the meantime I had already offered Exhibit 56 which is Document 34.

THE PRESIDENT: Just one thing further, and I think you are straight. Your Document 70, which you are marking as your Exhibit 55, is for identification only, since it is already in evidence; is that correct?

DR. NELTE: Yes. Document 34 is Exhibit 56. That is an affidavit of Director Dr. Lutter, and that gives the composition and tasks of the Pharmaceutical Main Conference, as well as the position of officer Hearnain as Chairman of that Main Conference.

Dr. Lutter seems especially suited to make this statement as he has regularly attended the Pharmaceutical Main Conferences since 1934 as recording secretary.

How often did the Main Conference meet?

A As the affidavit of Dr. Lutter shows, and I personally can confirm this, since 1935, three times a year at the most. In the 5 1/2 years of the war, from the 1st of September, 1939, until the capitulation in May, 1945, 3 times altogether.

There is an opinion of my colleague, Lautenschlaeger, which reads differently in his affidavit WI 8004, Exhibit 307, Document Book 84, 4. This is page 128 in the English text, Document Book 84. Dr. Lautenschlaeger had no records at his disposal here, and apparently his memory was inaccurate, if he says regarding the number of Main Conferences, that they took place every six weeks. That may have been true for the first years of the Pharmaceutical Main Conference. That was founded in 1926.

Q At this Pharmaceutical Main Conference were any resolutions made, and what type were they?

A They referred primarily to the introduction of new products, products in cases in which the clinical tests had been successful, as to the setting of prices for the new commercial preparations. These were actually only announced by the sales organization, and also they referred to the finishing, - that is, the making of the preparations in the tablet form, ampule form and so on, abroad.

Q Aside from these matters, what else was discussed?

A Scientific problems, patent questions, contractual questions, and packing questions.

Q Mr. Lautenschlaeger, in his affidavit, Exhibit 1520, NI 9811, point 16, Document Book 24, - you no doubt have it - page 28, English Document Book page 78, said that you were informed about the Pharmaceutical preparations developed at the laboratories of Hoechst and the Behringwerke.

A That is to be understood in the sense of what I have already said about the exchange of information on new products undergoing clinical tests, above all, if the products in clinical tests promised success.

Q Does your answer also refer to the Behringwerke and Marburg preparations?

A There was no scientific discussion on the Behringwerke in Marburg. Director Zahn reported at the Main Conference about the commercial side of this business, and on this occasion, a few remarks may have been made about the prospects of these preparations.

Q At a Pharmaceutical Main Conference, or a Scientific Central Conference which generally preceded the Main Conferences, was there ever any report given of a fact which could arouse the suspicion that in the testing for use of I.G. Farben drugs, there was something involved that was not quite right?

I shall not use the word, "criminal", only the term: "not quite regular".

A Never, either at a Central Conference or at a Main Conference, at a TFA meeting, or a Vorstand meeting. I would, of course, have interfered if there had been even the slightest suspicion.

Q You were Chairman of this Pharmaceutical Main Conference?

A Yes, from the first of January, 1931, on.

Q On the basis of what capacity did you hold this position?

A I had the somewhat doubtful advantage of being the Senior

Vorstand member of all of the Pharmaceutical Departments. In addition, I was at that time the only regular Vorstand member within the Pharmaceutical Department, since Mr. Mann, Sr., and Dr. Ammelburg, on the 30th of December, 1930, had left active service, and Mr. Mann and Mr. Lautenschlaeger became Deputy Vorstand members on the 1st of January, 1931.

This can be seen from the basic information of the Prosecution.

Q Did this arrangement that the Senior Vorstand member presided at a Commission or a Conference, also apply to the other mixed committees?

A It was a matter of course, and it was exactly the same in the other mixed committees. I remember for example--

Q Professor, that is sufficient. This is more important: What functions did you have as Chairman of the Pharmaceutical Main Conference?

A As Chairman of this Conference it was my duty to call meetings of the Conference when needed, - that is, to invite the members of the Conference and to preside at the Conference.

Q Did you have any authority which gave you a supervisory right on the members of the Main Conference in the plants which they represented?

A I had control over the directors of the Elberfeld plant who participated in this Main Conference. So far as the other members of the Main Conference are concerned, I had no supervision or control.

Q Is the opinion of Dr. Struss who was examined as a witness on this subject, that you in the Pharmaceutical Branch were Primus Inter Pares, - the first among equals, - correct?

A That is no doubt right on the basis of my age, and on the basis of the fact that I became a member of the Vorstand 10 years before Mr. Mann and Mr. Lautenschlaeger.

Q I believe that the Court knows that there were other reasons too, which made you Primus Inter Pares.

Mr. President, I refer to page 1878 of the German record, 1889

of the English, where you will find the opinion of Dr. Struss who was examined here several times. Now in paragraph 152 of the Trial Brief, Part III, page 85, the Prosecution says, and I quote:

Q It is true that Hoerlein and Lautenschlaeger were the highest pharmaceutical experts in Farben, who were directly responsible for the production of medicines at Hoechst, the Bahringerwerke factory, Marburg and Leverkusen, and also that Mann was in charge of the Sales Organization Boyer.

Is the contention of the Prosecution in this form correct?

A Yes and No. It is true that Lautenschlaeger and I were the highest Pharmaceutical experts in the scientific and technical field in Farben. It is also true that Mr. Mann was in charge of the Pharmaceutical Sales Organization, but it is not said that in Elberfeld, - that is in the plant of which I was in charge, which is not mentioned at all, - drugs were developed and produced.

Q The statement of the Prosecution which has been cited gives an uninformed person the impression that you and Professor Lautenschlaeger were jointly responsible for the production of drugs. How was it in reality?

A Professor Lautenschlaeger and I were responsible, each of us, in his own plant. The true state of affairs can be seen from the Prosecution's own Documents, Basic Information Book 1, Page 2, which gives a chart of the various plants belonging to Farben.

Q I believe this chart is also a Hoerlein Document, No. 80. It was merely marked for identification, and I ask that it be accepted as Exhibit 57. This is the same document that is in Book 2 of the Prosecution, as Exhibit 47, page 50 of the English, Document NI 10029.

It is in Document Book 3, page 9 for Hoerlein.

Mr. President, lest I forget, I may remark now that the interpreter when Professor Hoerlein answered my question, "Is this assertion of the Prosecution correct", he answered, "Partly correct and partly incorrect", and the interpretation was "Yes and No".

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I ask that this translation be corrected.

THE PRESIDENT: That may be done. However, Doctor, it is
hardly likely that it would confuse us in either event.

Q I believe, Mr. President, it's possible that later you will not remember what the answer was and if you then read "yes" you may be confused. Professor, will you please comment on this basic information chart? You have this chart, don't you?

A Yes, I do. I remember it. This chart shows that I was in charge of the Elberfeld plant which belonged to the Works Combine Lower Rhine which was in charge of Dr. Kuehne. It also shows that Prof. Lautenschlaeger was in charge of the Hoechst plant and that the Works Combine Main Gau included the Marburg and Eystedt plants. I should also like to point out that Mr. Lautenschlaeger in the affidavit offered by the Prosecution, NI-8004, Exhibit 307, Book 84, gives us an authentic statement of Prof. Lautenschlaeger --

Q This is 128 in the English, Mr. President.

A -- in which he confirms that his function was completely independent of me. In the beginning under No. 4 you will find "I was put in charge of the entire research laboratories of the drug department and I also gradually took over the management of the pharmaceutical concerns. Then from about 1928 on I was in charge of all Hoechst drug departments." And, in the concluding sentences of this paragraph this is repeated as follows: "In this capacity as Plant Manager I was in charge of research, production and the care of the employees."

Q You will find this, Mr. President, under No. 4 of the Lautenschlaeger statement, on page 15 of the German Book and page 128 of the English.

A I should like to add something if you will permit? After Mr. Mann, who is also mentioned, who was the head of the Pharmaceutical sales combine and the combine for insecticides and in this capacity he was completely independent of the plant managed by Prof. Lautenschlaeger and myself. We three represented the pharmaceutical parts of the Farben and were three independent persons, each of them responsible for his own field.

Q There was no representative in charge of the over-all interest

of the pharmaceutical branch of Farben?

A No, there wasn't.

Q Who represented -- who reported to the Vorstand about pharmaceutical matters? I believe you have already told us that.

A Each of the persons mentioned just his own sphere. This is proved by the minutes of the Vorstand meetings which show that at intervals I reported about pharmaceutical developments in the laboratories, that Prof. Lautenschlaeger reported about Hoechst and Marburg laboratories and that Mr. Mann at shorter intervals as a scientist reported on the commercial affairs of the pharmaceutical department.

Q I believe, Mr. President, I need only refer to the fact that the Vorstand minutes as far as they have been offered by the prosecution confirm this. I should now like to ask you what happened when higher government and Wehrmacht agencies in question affecting the pharmaceutical branch wanted certain matters to be discussed with you? Was there one person who took charge of such negotiations?

A In such cases the negotiations were conducted by the plant and the person directly concerned with the case in question.

Q With what agency of this sort did you, yourself, negotiate as head of the Elberfeld plant?

A In my Document Book 2, a supplement to my own affidavit, Document 42, Exhibit 42, on page 6 there is a letter from the Army Medical Inspector Prof. Dr. Waldmann, of 21 May 1937 to me. This shows that he negotiated with me regarding the introduction of a new drug.

Q A drug produced in Elberfeld?

A Yes, in Elberfeld. In a written report to Mr. von Halle of 10 April 1947 I said that Prof. Mrgowski had called on me during a visit in Berlin. I can add today that this was done through Dr. Thiesmann, the head of the group for pharmaceutical products. I have remembered the name in the meantime. Mr. Mrgowski wanted to know the possibility for Farben to supply malarial drugs and I may anticipate an affidavit from former Pres. Raigher, from the Reich Health Office

which showed that on the occasion of a visit I suggested to him that a drug against gonorrhea which we were to produce for reasons of public welfare be made subject to a prescription so that it would not be misused. This negotiation with high medical agencies occurred on other occasions, too. For example, I recall a meeting in the Reich Ministry of the Interior with State Secretary Dr. Conti where vitamin supplies for the German children was discussed to protect them from rickets and other deficiency diseases. I also recall that in the beginning of 1942 Goering through a Ministerialrat had me called by telephone from the Hotel Adlon quite abruptly for a report on a drug supply for the front and the German Homeland. Of course, I submitted to this request.

Q I would be interested in knowing on this occasion the discussion with Goering. Were any other questions discussed besides the drug situation and drug supply?

A Goering had come back from the Eastern Front and seemed very tired and worried. He wanted to know whether in February or March at the time when grippa was expected there was a sufficient supply of the customary drugs from I. G. Farben, that is, aspirin, pyrazolidon, Riboflavin, and panflavin tablets. Then he referred to the enormous lice problem in the East and wanted to know whether we didn't have any drugs to kill lice. He was informed that there was no therapeutical agent against typhus and that in the field of prophylaxis only very little could be done and only a relatively small group of people could be prophylaxed against typhus. As I have seen from the documents the expansion of vaccine for typhus and the establishment of an institute at Lemberg had been discussed earlier.

Q Did you perhaps discuss anything with Goering in your audience that might have any connection with facts brought forward by the Prosecution here?

A No. Goering wanted general information. The whole discussion took perhaps half an hour or three-fourths of an hour, and, of course, I considered it important to try to explain the difficulties under which

industry was working in Germany. I made the vain attempt to keep our German workers for the pharmaceutical industry. Goering actually agreed. The request was submitted to the Economic Group Chemical Industry and nothing was done about it there.

Q In the further course, that is to say, in a subsequent period, did you hear anything from Goering that had anything to do with your talk with him?

A That was the first and only time that I saw Goering. I received no letters or instructions or anything in connection with this talk.

Q I now return to our point of departure, Paragraph 1, page 52 of the Trial Brief, Paragraph 3, and I now ask you what is a correct judgment of your position and Prof. Lautenschlaeger in the pharmaceutical branch?

A It should above all underline my position at Elberfeld and it should read: "Hoerlein and Lautenschlaeger were the highest pharmaceutical experts in Farben who were in charge of the research and development of drugs, Hoerlein in Elberfeld and Lautenschlaeger in Hoechst." Lautenschlaeger was in charge of Marburg but I should like to stress the fact that research and production of sera and vaccines were conducted by three recognized specialists in Marburg; Prof. Bieling, Prof. Hans Schmidt and Dr. Demnitz independently.

Q. Prof. Lautenschlaeger in another affidavit, Exhibit 1520, NI-9511, No. 16, page 28, English page 78 speaks of you and I quote: "Leader of the pharmaceutical sparte." Is this correct?

A. I think that's an unfortunate choice of expression. If I had been one leader of the pharmaceutical sparte there would have been a second or third. From the chart of the Prosecution, Exhibit 47, NI-10029.....

Q. That's in Book 2, page 35, Book 1 of the Prosecution.

A. From this chart we see that there were three Sparte in Farben. Sparte 1 for nitrogen, metholone and oil; Sparte 2 for dye stuff and pharmaceutical products and Sparte 3 for artificial fabrics and photographic products. The pharmaceutical branch was part of Sparte 2.

Q. And who was in charge of Sparte 2?

A. Dr. ter Meer.

Q. Was Dr. ter Meer your superior?

A. I never considered him that. We worked together as colleagues. Ter Meer was in charge of the Sparte meetings and the TKI meetings in which the clearance from new services at Elberfeld was submitted. They required his permission. Also the promotion for Directors and Foremen but that was true of the Vorstand members of the Sparte, too, because on certain questions a unified policy had to be adopted in such a big organization. In spite of that I never considered Dr. ter Meer my superior but my *primus inter pares*.

Q. You considered Dr. ter Meer responsible for anything that happened in the field of pharmaceutical and insecticides?

A. I want to answer this question with a definite "no". Dr. ter Meer had nothing to do with the development in these fields and is not responsible for them. Both of these matters were headed by Dr. Lautenschlaeger and myself, especially since he was fully occupied with other duties. Farben was not a rigid structure of superiors and subordinates. It was a group of men who were capable and willing to take the responsibility for what they did.

Q. I now come to the subject of Buchenwald, Dr. Krugowski and methylene blue. The Prosecution in dealing with the experiments in the Concentration Camp Buchenwald mentioned the name Elberfeld in connection with the submission of the so-called Ding Diary, Exhibit 1608, NO-265, Book 84, in the English Book page 62 and in the Trial Brief Part III, page 75. Would you please look at it and read it. I don't want to read all that. I wish to save time. The therapy experiments with ceridin and methylene blue are handled there. It says there that at the suggestion of Farbon the typhus therapy was tested on mice. First comes the ceridine and then the methylene blues under Professor Kikuth of Elberfeld. It is said "at the suggestion of I. G. Farbenindustrie the preparation 3582, ceridin and methylene blues developed at Elberfeld for typhus were to be tested in therapy experiments". How did Prof. Kikuth discover methylene blues for typhus?

A. Methylene blue is not produced at Elberfeld. It is, however, a generally known drug for various infectious diseases as Prof. Butenandt explained yesterday. I shall assume that it is known that in Germany typhus is completely unknown in peace-time. It became an enormous problem by contact with the East during the war, both for the fighting troops and for the people at home through the prisoners-of-war and through our own soldiers when they came on furlough or were sent to a hospital at home. The problem was so terrible because there was no medical experience in the field of therapeutical treatment. The Weigl Institute at Cracow which had existed already during the Polish era, after it was taken over by the Wehrmacht, produced the so-called Weigl Vaccine from the intestines of typhus infected lice but the capacity of this Institute was very low. The vaccine was good but it was only a prophylaxis, not a therapeutic one and it was available in only small quantities.

THE PRESIDENT: Mr. Witness, when you can, without breaking your line of thought, indicate to the Tribunal and we will rise for our

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recess. Very well, we rise.

(A recess was taken)

THE MARSHAL: All persons in the courtroom find seats, please.

The Tribunal is again in session.

DR. SCHUBERT: Schubert for Buergin.

If the Tribunal please, as I shall soon have to open the case for the Dr. again, I would beg to ask the Tribunal's permission to excuse Buergin so that he can prepare his defense. I would like to have him excused on Wednesday and on Friday. It seems that thus —

THE PRESIDENT: That request is granted.

DR. SCHUBERT: Thank you very much.

DIRECT EXAMINATION (Continued)

HEINRICH HOERLEIN

BY DR. MELTE (for Hoerlein):

Q. Professor, you spoke about the typhus situation and the problem of typhus as such, and the last thing you told us was that the situation in the field of combatting typhus was extremely bad in Germany. Is there anything else you have to add to this?

A. I should like to add that the situation was particularly bad because combatting lice, which was the agent for typhus, was not possible in these vast areas. At that time we did not have DDT, which later on became so well known, Dichlordiphenyltrichloromethan, and other therapeutic means against typhus were not in existence at all. This was the situation at the beginning of 1942.

DR. MELTE: If the Tribunal please, at this point I would like to offer Hoerlein Documents 77 and 78 as Exhibits 53 and 59. They are two articles written by experts, describing the hopeless situation in the field of typhus therapeutics in 1941 and 1942.

Q. Would you please continue?

A. It goes without saying that in that situation medical and pharmaceutical sciences were called into the field. Medical experts who were particularly well versed in the field of tropic medicine, were working for a method in order to combat this danger which can not be

exaggerated. Mortality figures with that disease lay between 30 and 60 percent. And it must be borne in mind that the East, which had become immunized, is less open to this disease than is central Europe, the inhabitants of which suffer from this disease more frequently and more heavily. Now, Professor Kikuth at Elberfeld was the man in charge of the Institute for chemo-therapeutics. As quickly as I could and with as much equipment as I could, I established for him a laboratory for virus research. As for his qualifications, I might mention that he became a world authority in the field of malaria. Humanity owes him the biological tests on the basis of which atabrine was invented. Professor Kikuth found, as he was doing his research, that methylene blue had a certain amount of effect on typhus germs. I need not go into details here, and in order to save time for this Tribunal, I would merely refer to the exposé which is about to be submitted.

DR. MELTZ: If the Tribunal please, Hoorlein Document Number 82 is offered as Exhibit 60. This is an exposé on chemo-therapeutic experiments with typhus with methylene blue, the author of which is Professor Kikuth.

Q. Now, did you make any use of this invention?

A. Yes, we did. I don't think I have to stress here how happy we felt that in Elberfeld it seemed that we had found a way which gave cause for the hope of being able to combat this terrible disease. In view of the significance of the problem, most thorough research work was necessary. That is the reason why I did not immediately pass on Professor Kikuth's exposé to the scientific department, as was my custom otherwise. I studied it in great detail and discussed it with Professor Kikuth. By accident there was in Berlin soon afterwards a demand expressed quite unexpectedly, which I mentioned before. Together with the man in charge of the Hygienic Institute of the Weissen SS, Krugowski, and I discussed possibilities to combat malaria in the East with him. There we were concerned with the atabrine and thiodiphenylamine, which

we had manufactured, which was used to destroy the anopheles. Of this latter product three hundred fifty tons were ordered after our conversation.

DR. MELTZ: In this connection, if your Honors please, I offer Document Hoerlain Number 83 as Exhibit 61. It contains the order which came about after the conversation with Professor Krugowski.

A. May I add at this point that this was the only conference which I ever had at any time with Dr. Krugowski. I saw him once again at the beginning of December 1942 in Lemberg on the occasion of the opening of the Behring Institute, but I did not talk to him.

Q. Now, did you and Professor Krugowski, when you had your first conference, touch also on the problem of methylene blue?

A. I made statements on this before the indictment was served in a written statement delivered to Herr von Halle. I said then from memory that Krugowski and I did not discuss anything apart from the important question of combatting malaria. Nor do I remember anything now that we discussed methylene blue, but remembering the situation as it was at the time, I am inclined to think that we did discuss the problem of typhus because that was so topic and so serious a problem, and the problem how the danger could be mastered was on everybody's mind, indeed had to be on everybody's mind who, according to their position and character were able to help. As Professor Kikuth had just completed his exposé on methylene blue, I would like to, in this effort of looking back -- I am inclined to think that I drew Krugowski's attention to methylene blue.

Q. Did you hand an expose over to Dr. Krugowski on methylene blue?

A. No, after all, I had not been prepared for this conference and therefore I did not have an expose in my attache case. But without being too certain in my memory, I am convinced that the expose was sent from Elberfeld to Krugowski. Another reason why I am inclined to think so is that Professor Kikuth, at the beginning of December, when he traveled to Lemberg, made a stop in Berlin and discussed his discovery with Krugowski as he did the typhus situation.

Q. In this connection I beg to offer Excerpts Document 21 as Exhibit 62. This is an affidavit by Professor Kikuth concerning relations with Professor Krugowski concerning the testing of methylene blue and I beg the Court to accept this as Exhibit 62. Did you ask Professor Krugowski to test methylene blue therapeutically in cases of typhus?

A. I don't remember anything about that, but I don't think its entirely impossible. I mean that I, as much as Professor Kikuth says for himself in the affidavit, also drew his attention to the possibilities of a possibly successful therapeutic treatment.

Q. As for the carrying out of therapeutical tests, did you discuss that in detail with Krugowski? I mean where and when such tests were to be carried out?

A. I am quite sure I did not, because that would have been most unusual, and as such I would remember it.

Q. Do you know whether Professor Kikuth discussed the carrying out of therapeutical tests with methylene blue in detail?

A. I don't know.

Q. After your conference with Krugowski did you maintain relations with him?

A. After this conference I did not have another conference with him nor did I correspond with him. It must have been by the middle of December that I was informed that Krugowski had visited a representative

of the Berlin office of Farben, and they discussed a number of subjects and on that occasion he told him that he, Krugowski, had been promised a delivery of methylene blue. I can not remember whether I had promised this to Krugowski. I am inclined to think that I did not, because Krugowski could get his own methylene blue in any chemist's shop and we ourselves in Elberfeld did not produce methylene blue. As I remember it, Krugowski should have addressed himself to us, after he had studied the report which had been sent to him, if he wanted to have any further information from Professor Kikuth. Now, when I was informed that Krugowski was expecting us to send him methylene blue, I asked Kikuth to get Director Martens to send him an appropriate quantity.

Q. Was that done?

A. The prosecution has introduced a document NI-957B, Exhibit 1577 contained in Document Book 86.

Q. It's on page 25 of the English version, if your Honors please.

A. This document reminded me of the fact that Kikuth carried out, or rather passed on, my order to Dr. Martens' with letter of 23 December 1942. There was some delay in this matter -- probably because it was about to be Christmas and New Years. I think it must have been on the eight or the ninth of January 1943 that I heard that the consignment had not left Elberfeld yet. Thereupon I contacted Dr. Martens and asked him to explain this. He asked Dr. Koenig to report why this delay had occurred. I find all these details in document NI 9575, which is Exhibit 1679, in Document Book 86, German page 34.

Q. And page 29 of the English. Now, the prosecution, probably from the point of view of this report by Dr. Koenig, have stated in their opening statement that you had insisted that tests with methylene blue must be carried out. What can you tell us about that?

A. The fact that I did not insist, could be illustrated by the fact that after my conference with Krugowski which took place at the end of October or the beginning of November, I did not cause anything to

be done. Had I felt any special interest for Mrugowski to test methylene blue, surely I would have caused immediately after the conference that Mrugowski would be supplied with methylene blue. Now, when I expressed my indignation on 8 or 9 January at the fact that something I had asked to be done on 23 December, had not been done yet, this can be explained by the fact that I always expected everything to be done swiftly and promptly and that a delay of more than two weeks, I felt to be improper.

Q. Did you hear anything about this later on -- namely that Professor Mrugowski actually did test methylene blue?

A. I heard nothing more about it, nor did I receive a report, and I therefore do not know whether Mrugowski made therapeutical tests with methylene blue or whether he didn't.

Q. I have already drawn attention to the entry in the so-called Ding diary, according to which in Buchenwald therapeutical tests are alleged to have been carried out. The first preliminary entry is dated 10 January 1943. Did you know Buchenwald?

A. No, I heard the term Buchenwald mentioned for the first time after the collapse.

Q. Were there any relations between Elberfeld and Buchenwald concentration camp or relations with the camp doctor in Buchenwald? Was there any correspondence?

A. Never.

Q. Were there some Elberfeld things sent to a cover address in Weimar or elsewhere -- drugs, for instance -- designed for the Buchenwald concentration camp?

A. No.

Q. Did you know that Dr. Mrugowski was officially connected with Buchenwald concentration camp?

A. No, I did not know that. I knew Dr. Mrugowski before the conference which I have mentioned -- the only and only conference -- only by name as a lecturer at the university and as the highest hygienic

officer in the Waffen SS. In that capacity he obviously had to interest himself in combatting typhus, because without any doubt many members of the Waffen SS fighting at the front were suffering from typhus. I might mention in this connection that at the same time letters from Wehrmacht medical officers reached Elberfeld which reported on the hopeless situation in the fight against typhus asked us for our help. This can also be seen from a prosecution document NI 9579, exhibit 1676, and is a letter from a Stabsarzt Dr. Kaufmann.

Q. If the Tribunal please, in Document Book 86 on page 29, page 22 of the English, you will find this letter by Stabsarzt Dr. Kaufmann, which I also have included as Document 71 and offered for identification as Exhibit 63. I do so because this letter which Professor Hoerlein addressed to Stabsarzt Dr. Kaufmann -- that is to say Professor Kikuth addressed to Dr. Kaufmann in reply -- has not been submitted by the prosecution and I want to submit it in connection with the prosecution document as Exhibit 64. You will find both documents in Book 3 on page 125 -- page 122 and 125. May I offer the first document for identification and the second into evidence.

THE PRESIDENT: Now, just a moment please. Dr. Helte, your Document 72 you are offering as your exhibit 64 for identification, is that correct?

DR. HELTE: Yes. This is offered into evidence, not for identification.

THE PRESIDENT: Document 62 becomes Exhibit 64 in evidence.

DR. HELTE: Yes.

THE PRESIDENT: Document 72 I want to say becomes Exhibit 64 in evidence. Document 75 is marked Exhibit 65 for identification.

DR. MELTZ: Document 7, your Honors.

THE PRESIDENT: Document 71 has already been marked as Exhibit 63 for identification according to our records.

DR. MELTZ: Yes. May I say briefly that Hoerlein Document, I offer for identification as Exhibit 63.

THE PRESIDENT: Very well.

DR. MELTZ: And Hoerlein Document 64 -- I beg your pardon, 72 -- I offer into evidence as Exhibit 64.

THE PRESIDENT: Very well. We have the record straight now.

BY DR. MELTZ:

Q Do you want to say anything about this letter, Professor?

A I think this correspondence is self-explanatory, and in order to save time I need not say anything further.

Q May I point out here that this letter by Professor Kikuth, Exhibit 64 in other words, is dated 23 December 1942 -- that is to say, the same date which may be found on the letter from Professor Kikuth to Dr. Martens about the delivery of methylene blue to Dr. Dragowski. Were there any other inquiries addressed to you concerning methylene blue in order to treat typhus cases?

A I am sure there were a great many. For instance, Professor Bensi once addressed an inquiry to us. He held an important position on the eastern front, and in that connection the prosecution has submitted my reply to Professor Bensi's inquiry, but not the inquiry by Professor Bensi himself, a letter dated 17 December 1942.

Q If the Tribunal please, that letter is Hoerlein Document Number 75, and I offer it as Exhibit 65. Professor Bensi's letter, who was a consulting internist with the army at the eastern front, shows the hopeless vacuum which existed in treating typhus, and the letter concludes with an appeal addressed to Hoerlein, and what he said is in

the large scope of research of the Elberfeld, the question of combatting typhus in a therapeutical manner should be dealt with. This document and the reply which the prosecution has submitted, I offer together so that the two documents in conjunction can be perused by your Honors. I offer Hoorlein Document 34 as Exhibit 66 for identification because it is a prosecution document. At the same time I would like to mention at this point concerning Exhibit 1678, WI 9577 — you will find in the index of Volume 86 — that this letter has this concluding passage — and I quote: "The _____ (?) sent no information as to your research." This passage is incorrect because in actual fact there is nothing mentioned of an insistence to have results reported to Professor Hoorlein. This is one of the reasons why I had to offer this document as Exhibit 66 for identification. Is there anything else you wish to say on this point, Professor, before we leave it?

A I would like to make one remark. The prosecution has asserted that Farbon was interested in having therapeutical experiments carried out in concentration camps. That assertion is not only incorrect, but quite incredible. If we helped Wehrmacht medical officers in treating Russian prisoners of war at the front, and when members of the Wehrmacht came to us, and we recommended to them to use methylene blue, and also sent them to the expose, this shows that we only wanted to help to fight so serious a disease wherever it reared its ugly head. That we wanted to make experiments on concentration camp inmates, is incredible for the reason, that these poor people lived under abnormal conditions and would therefore have been entirely unsuitable subject. I say that not one single drug produced in Elberfeld was ever sent to a concentration camp in the examining for clinical tests, except for two drugs against typhus.

Q Was there a possibility that somebody suffering from typhus could suffer damage to his health by being treated with methylene blue?

A No such possibility existed. Professor Butenandt spoke in such detail about this yesterday that I do not wish to repeat anything.

Q You testified that Buchenwald was unknown to you. Did you know Dr. Ding?

A I did not know Dr. Ding. I heard the name Ding in connection with the reports about the medical trial in Nurnberg, for the first time. Professor Lautenschlager has confirmed in an affidavit that he never discussed Ding with me.

Q What is your explanation of the fact that the name of Professor Kikuth could be found in an entry in Ding's diary.

A I can not make a definite statement on this, of course. It seems probably to me that Krugowsky, having talked to Kikuth, sent the expose on methylene blue to Dr. Ding with the remark that so well known an authority as Professor Kikuth had discovered something in the field of typhus, and would he please try it out. Dr. Ding, as he used to do these things, entered the name of Professor Kikuth into his diary. Interestingly enough my name is not mentioned, from which it should become clear that Krugowsky did not mention my name as the instigator which after all would not have been true. But the fact that there was also no point of contact between Kikuth and Ding, becomes clear from his affidavit. Had this been so, I am quite sure he would have told me, and that he did not do.

Q Professor, you state on oath that you saw Dr. Krugowsky on one occasion which was at the end of October or the beginning of November 1942.

A Yes, it was probably at that time.

Q You know nothing of any connection between Krugowski and concentration camps?

A No.

Q When he made a complaint, you had some methylene blue sent to him.

A Yes.

Q You don't know whether this methylene blue was passed on to Dr. Ding for therapeutical tests?

A No.

Q You did not, on any occasion, receive a report or information that therapeutical experiments with methylene blue were carried out in Buchenwald concentration camp?

A Not at any time.

Q Now, the prosecution have asserted that contacts existed for many years between almost all plants of Farben and the Buchenwald concentration camp. They did so, for instance, in paragraph 114 of Part 3 of the trial brief. You have testified already that Elberfeld had no contact with the concentration camp Buchenwald and did not send any drugs to have them tested there. But in view of the charge made in paragraph 114 in Part 3 of the trial brief and the documents mentioned in that paragraph I have to put a few questions to you.

The Prosecution have asserted knowledge of criminal experiments in Buchenwald in the case of the whole of the Vorstand of which you were a member, as well as those defendants who were members of the pharmaceutical branch. Let me ask you this. Did you have any knowledge of the fact that other plants of I.G. were in contact with the Buchenwald concentration camp?

A No.

Q Was there an exchange taking place of the correspondence which Elberfeld plant had with other plants, such as Hoechst and Harburg?

A I have described before that Hoechst and Elberfeld, through the Scientific Department Leverkusen, received copies concerning the tests of drugs about to be developed; about any correspondence concerning the other affair, I don't remember anything at all.

Q Was the position this: that you, that means Elberfeld, received a copy of such reports which had passed through the Scientific Department in Leverkusen?

A Yes.

Q But you did not receive a copy of the correspondence which other plants had directly with some agency?

A No, every plant was an independent agency.

Q Let me ask you quite concretely. You know Document Book 84 from your careful study, and I have asked you to look at letters which the Prosecution have submitted, all of which date from the time before 1942.

These, if the Tribunal please, are Exhibits 1601, English page 20 of Book 84; 1602, on page 22; Exhibit 1603, on page 28 of the English; Exhibit 1604, on page 29, English, of the document book; and Exhibit 1605, on page 30 of the English.

Did Elberfeld receive copies or information through another way of these matters?

A In all these cases we are concerned with matters between agencies which were outside the scope of my Elberfeld activities.

In order to be on the safe side, I should like to remark that these letters, as far as Leverkusen is concerned, had nothing to do with Director Dr. Mertens.

Q You said on oath that neither you nor your Elberfeld plant had any connections whatever with concentration camps.

A Yes, this is what I am saying on oath.

Q You also state that you did not know anything of the fact that there were relations between concentration camp Buchenwald and some other I.G. plants.

A That again I am saying under oath.

Q Now, I am talking about the problem of Drug B-1034. The Prosecution have asserted in connection with medical experiments on concentration camp inmates that B-1034 was used. The drug itself is not mentioned in the trial brief of the Prosecution. According to the assertion by the Prosecution, this drug is supposed to have been tried out in concentration camps, by Dr. Vetter, including Auschwitz, for experimental purposes.

Will you tell me very briefly, in order to maintain the context, what B-1034 is, and please bear in mind that Prof. Butenandt has already said something about it?

A B-1034 was a drug which was part of the series of Sulfa drugs. Concerning the theories which finally led to this drug, I do not wish to state anything at the same time. It was a drug which dissolved easily and very probably it had new qualities.

Q Was a drug against typhus being searched for?

A No. Prof. Eikuth found this drug in the event of two injections with virus in laboratories, and he found them much more effective than any other sulfonamides known before, and he therefore suggested that it should be tested clinically, that it should be tested in the case of an Egyptian eye disease known as Trachoma. It is a virus disease and supposes B-1034 was dealing at first with that disease.

DR. MELTZ: If the Tribunal please, I offer now Hoerlein Docu-

ment 81 as Exhibit 57. This is the first expose concerning B-1034 as a drug against Trachoma. To simplify matters I shall also submit the second document, another expose on B-1034, which comes from a much later period of time, which is Koerlain Document 87, and it is offered as Exhibit 58.

BY DR. NELKE:

Q Now, Dr. Vetter received this drug from the Scientific Department in Leverkusen.

A Yes, but what happened first was this. Despite the need to save time I must mention this briefly. It was in 1941 that this drug was very effective against typhus. Around the same period of time inquiries were addressed from many sides to us to find a chemotherapeutical drug against typhus. For instance, Prof. Schlomka and his medical officer Dr. Lutz of the medical university clinic of Leipzig, by Prof. Seifert of the hospital of St. George in Leipzig. Now, as typhus is also a disease caused by a virus, these people were offered Drug-B-1034, and reports which reached us from those people gave rise to the hope that B-1034 might really be a method whereby you could take a favorable influence on the problem of typhus.

Q Did you suggest to have this drug sent to Dr. Vetter?

A No.

Q Did you know Dr. Vetter?

A Dr. Vetter was a young man who, in 1938, joined the Scientific Department. Before the war I saw him once or twice at a conference of representatives and it was on one of those occasions that he asked to be introduced to me.

Q Was Dr. Vetter one of your subordinates?

A No, he was an employee of Department One, the Scientific Department in Leverkusen.

Q Did you know that Dr. Vetter had contact with the Scientific Department in Leverkusen, after he had been drafted into the Waffen SS and had become an SS doctor?

A I did not know that he was a member of the SS, nor do I remember to have heard that he had been drafted as an SS doctor. It is possible that his name cropped up in a conference between Dr. Mertens and myself, but I have no definite recollection of this.

Q Was it not at some conference between Dr. Mertens and yourself that it was reported to you that Dr. Vetter was a camp doctor in a concentration camp, and was trying out B-1034 on concentration camp inmates?

A I am quite sure that this is not so because that would be an affair which I most certainly would remember now.

Q Would you have had any misgivings, had you heard that B-1034 was being used to treat concentration camp inmates?

A Had I been faced with the question whether a conscientious doctor who has to treat concentration camp inmates for typhus may be handed B-1034, or any other drug which might be helpful against typhus, I certainly would not have raised any objection because, according to reports by German authorities, the drug B-1034 showed favorable results on typhus. It would have lacked all responsibility if I had refused a doctor in a concentration camp a drug because he was treating sick concentration camp inmates. I said this morning I would have regarded this as a sin or, to use the parlance of the Prosecution, as a crime against humanity.

THE PRESIDENT: The Tribunal will rise until one-thirty.

(A recess was taken until 1330 hours, 3 Feb. 1948)

AFTERNOON SESSION

(The Tribunal reconvened at 1330 hours, 3 February 1948)

THE MARSHAL: The Tribunal is again in session.

DIRECT EXAMINATION (Continued)
HEINRICH FOERLEIN, Resumed

DR. WELTE: Mr. President, I have discussed with the Prosecution the further course of the presentation of evidence, and we have agreed that after the direct examination of Prof. Foerlein the witnesses Prof. Mooss and Dr. Luettke will be examined. I hope that we can complete the examination of these witnesses today.

BY DR. WELTE:

Q. Prof. Foerlein, you had last answered the question as to whether you had any misgivings or whether you would have had any misgivings if you had learned that B-1084 was used for the treatment of concentration camp inmates. You answered this question in the negative, and you pointed out especially that it would have been a crime against humanity if those poor people had been denied aid with this preparation.

Now, I ask you, as far as you know, did Dr. Vetter, with the exception of the shipment of the drugs to Dachau, which we know of, ever receive any other drugs from Farben but those to be used against typhus?

A. According to what I can deduce from the documents, Dr. Vetter received only commercial preparations, none of which were new, and not yet on the lists of the Army Medical Inspectorate, and drugs exclusively intended for use in typhus originally. However, one drug, 3583, was later used for tuberculosis, as the documents show.

Q. Are there diseases which cannot be reproduced in the model experiment in the laboratory where one is obliged to test possible preparations after careful investigation as to their non-poisonous character directly on human beings, that is, without animal experiments?

A. Yes, there are many such diseases. It is unfortunately not possible to reproduce every disease in the laboratory.

Q. Will you please mention one or two such diseases?

A. I can mention the final stages of syphilis, for example, tabes, paralysis; encephalitis lethargica, multiple sclerosis, schizophrenia. I may perhaps give one classic example: Paralytic treatment today by malaria infection is well known. Fever is induced and then malaria is cured. This attempt had to be made for the first time once and was by Wagner Iduregg; It is a recognized method of therapy today.

DR. HELTZ: Mr. President, at this point in the case for Prof. Hoerlein, I offer a document which refers to the activity of the Scientific Department at Leverkusen, and the connections of this department with Dr. Vetter, in connection with the Elberfeld drugs, especially, B-1034. Through the evidence which I am about to present to you, I intend to prove first, that the clinical test of therapeutic drugs cannot be considered an experiment, not as "Versuch" in the sense of the ten rules of medicine formulated by Military Tribunal one in the physicians Trial. Second, that the Scientific Department at Leverkusen neither passed nor suggested to Dr. Vetter that the drugs which were given to him, all of which had been tested in a therapeutic test beforehand, be tested on concentration camp inmates. Third, that Dr. Vetter never, in writing or orally, reported that he had tested these drugs on concentration camp inmates. Fourth, that the letters and reports offered by the Prosecution, from or to the Scientific Department Leverkusen, which deal with the Elberfeld products, objective considered do not show that Dr. Vetter performed any medically inadmissible experiments and reported on them. Fifth, that the material offered by the Prosecution is inadequate to consider it proved that Dr. Vetter used any Farben drugs in inadmissible experiments; that the Scientific Department in Leverkusen ever asked Dr. Vetter or suggested to him that the drugs given to him be tested by way of medically inadmissible experiments, and that the Scientific Department was informed of such experiments.

In this connection I offer, first, Document 74 for Hoerlein, which will be Exhibit 69. It is in Book III, page 56, an affidavit of Dr. Karl Koenig,

head of the Scientific Department, sub-department II.

Secondly, Document boerlein 94 which will be Exhibit 70. You will find this in Book 4, page 13. This is an affidavit about the principles which are observed when new medical remedies were discovered in the pharmaceutical industry abroad. The third document is Boerlein Document 79, an affidavit of this same Dr. Koenig. Dr. Koenig gave this affidavit to the Prosecution and to me simultaneously. The Prosecution did not offer it in evidence; I do offer it as Exhibit 71 —.

MR. HENSKOFF: Let there be any confusion, the affidavit referred to is an affidavit procured for the Defense and a copy of it was sent to the Prosecution a short while ago. This is the affidavit which is now being offered. As a matter of fact, it just as well might be pointed out that the affidavit is unlike any affidavit which has been introduced so far; it doesn't even purport to refer to facts but refers to an interrogation which was held of the witness and his memory of what occurred at the interrogation, rather than the facts, which I want to call to the Court's attention.

THE PRESIDENT: Now, gentlemen, those observations had better come in argument when we go to weight the affidavit was, and we are not concerned about who procured the affidavit and such collateral matter as that.

MR. SPEECHER: Mr. President, there is one matter. We think that the affidavit procured in that manner, when Dr. Helms had the alternative of obtaining a factual affidavit about the matter with which he was properly concerned, should not be admitted.

THE PRESIDENT: Are you objecting to the affidavit being admitted?

MR. SPEECHER: Yes.

THE PRESIDENT: State tersely now the grounds of your objection.

MR. SPEECHER: The grounds of our objection are that it contains much improper material, and that there is no reason why improper material could not be excluded in a proper affidavit in the case.

Just one second, Mr. Minskoff knows the details.

MR. MINSKOFF: May I give the specific objection to this particular affidavit in its present form? It purports to be the questions that were put to him and the answers that he gave. It is not a statement of what the facts are. The answers that he gave may have been false answers. He merely refers to an interrogation which was held, and how he answered that interrogation, from his memory not from any notes which were taken simultaneously or a copy given to him. Now he states "these questions were put to me, and this is what I answered at the time". He is not stating what the facts are which he is swearing to in that affidavit.

DR. HELMS: Mr. President, may I comment on this question, too. I did not ask Dr. Koenig for this affidavit. As far as I know, at the end of September, 1947 Dr. Koenig was interrogated by Mr. Minskoff and Mr. Von Halle in Frankfurt. As Mr. Koenig told me, and as this affidavit shows, Mr. Minskoff and Mr. von Halle told him that he would receive a record of the result of his interrogation which he would check and sign. He writes in his affidavit, on page 1, "Since I have

now waited in vain for the Nurnberg Prosecution officials to send me the expected record, as the basis of an affidavit, I now make this affidavit on the basis of notes supplemented by facts, which I intended to serve as an illustration to my statement of 22 September 1947".

That was because this document which he called an affidavit was certified by a colleague, and he sent it to both the Prosecution and to me for our use and I am offering it.

THE PRESIDENT: Now, gentlemen, there is no good purpose being served by continuing this discussion. We have not seen this affidavit until this moment, but in glancing over it, it does appear that a lot of it relates to an interrogation of this witness that had previously been taken, but even a hasty perusal of the affidavit shows that it does contain direct allegations of fact. I am not going to take the time to read them. You will find them on pages 45, 48, and 52 of the English version of the affidavit. We heretofore said that we could not prolong this trial to edit affidavits that contained surplussage and immaterial matters; that you could depend upon the good judgment and discretion of the Tribunal to separate the wheat from the chaff.

The objection to this affidavit is overruled, with the observation that insofar as it contains a matter that we regard as and incompetent and improper that that part shall be disregarded and we shall take into consideration only that part which purports to state the facts recited by the author and maker of the affidavit.

MR. SPEECHER: Mr. President I know you have ruled. The only thing that I ask you, respectfully and with a great sense of obligation, to consider, is whether or not this Tribunal or the Prosecution can tolerate to have brought before it continuously, things which are aimed at bringing out indirectly some alleged impropriety.

Now I personally believe that is the case here.

THE PRESIDENT: What alleged improprieties are you speaking about?

MR. SPEECHER: I think this affidavit, and another case which I

think we shall hear something more of very soon, and we welcome that opportunity, indicates that there was something wrong about the interrogation which Dr. Koenig underwent, and he is here discussing this interrogation he had with representatives of the Prosecution and Dr. Helte used that as a means of trying to allegedly bring out certain relevant facts.

If there is anything in this affidavit that is relevant to Dr. Helte, - he has already got one affidavit from Dr. Koenig - he could easily get another one which would supplement it and bring it out without being in this improper form, with all of the innuendoes that lie behind that.

THE PRESIDENT: Counsel, by taking a little time, we could find many, many affidavits offered by the Prosecution in which there was objections as to surplussage, expressions of opinion, rumors and reports. We admitted those affidavits on the assurance that we would regard the parts of them that contained facts as proper evidence, we would ignore the other.

Now the rule that will work for one party that way, ought to work for the other, and if there are improper recitals in this affidavit, that ought not to be considered by the Court, we will give you our assurance we will not consider them, and when you come to argue the case, we will invite you to call our specific attention to them.

"or unless you can say and dispute the observations that I have made, that this affidavit does not contain any statement of irrelevant facts, your motion, in the interests of consistency, I think you will concede, ought to be overruled, with the assurance that we will disregard the improper or immaterial parts and invite you to point them out by brief or argument at the conclusion of the case. We could not adopt any other rule and be consistent in the trial of this case.

MR. SPEECHER: Your Honors, it would certainly then be a rule of consistency with respect to your handling the question of materially relevancy and opinion, but with respect to the method by which this

material is brought here, affiant having asked according to Dr. Nolte, that a supplementary affidavit of some kind discuss the Prosecution interrogation be put in evidence, and on the basis of Dr. Nolte's statement that he is pleasing Dr. Koenig by putting in this affidavit, when he can see Dr. Koenig to get a proper affidavit without those innuendoes in it.

That is the thing to which the Prosecution is arguing.

THE PRESIDENT: I take it that you would contend and urge that those recitals were improper in this affidavit; is that right?

MR. SPEICHER: Yes, and that they could have easily been excluded.

THE PRESIDENT: Don't you think you can trust the Tribunal to recognize, with the help of your briefs and oral arguments, and to strike out of consideration, the parts that are improper.

MR. SPEICHER: Indeed, we do Your Honor.

THE PRESIDENT: Very well, then.

Dr. Nolte I think I promised that the Tribunal would hear you, and you may say what you have in mind now.

DR. NOLTE: Mr. President, I have offered an affidavit which I did not request from Dr. Koenig, which I did not discuss beforehand with him. As he said, in the interests of justice, he sent this affidavit to both parties, the Prosecution and the Defense, - telling them what he had testified to in his particular interrogation by Mr. Minskoff and Mr. Von Halle, and in order to prevent misunderstanding arising from the fact that his testimony was not shown to him at Frankfurt.

I am not in a position to divide the affidavit. I have offered the affidavit in the form in which I received it. It contains not only testimony favorable for Professor Heerlein, but also testimony which could be presented for the Prosecution. I am of the opinion that if this document conforms to the tradition for an affidavit set down by this Court, there is no legal reason why this affidavit should not be accepted.

I therefore ask that it be admitted into evidence, and I consider it a matter of course that you will be able to disregard any parts that you consider irrelevant.

THE PRESIDENT: Now the ruling of the Tribunal will stand, with this amplification:

If the Prosecution feels that there is something in this affidavit that is a reflection upon the integrity of any member of its staff, they may subsequently prepare and file a motion to strike out those parts so that they will not be in the record in this case, or if they feel that the motion would not be well taken, and they want to meet the issue, and it is competent. they may, on rebuttal, make their own showing as to what the facts were.

I may say that this Tribunal is not concerned with collateral issues. We are only concerned with whatever may be in this affidavit as a recital of facts constituting competent evidence. We do not want to take the time, and are not going to take the time, to edit the affidavit. We think there is enough in the affidavit that that standing alone would be proper. If the Prosecution wishes to make a showing of immateriality with respect to part of it, or incompetency, or wishes to file a motion setting out the parts they think ought to be eliminated out of this affidavit for any reason we will pass on that in due time, or if they think that the issues can properly be met by rebuttal and wish to adopt that course, if it is proper rebuttal, we will permit it.

The affidavit, with those qualifications, is in evidence.

DR. NELTE: I offer this document 79, as Exhibit 71.

The fourth document which I wish to offer is Document 108. This will be Exhibit 72. This is a questionnaire which was answered in an affidavit by Dr. Luecker and Dr. Koenig about the relations of Dr. Vetter with the scientific department at Leverkusen. Dr. Luecker who has also signed this affidavit will appear here as a witness to give further testimony, and this affidavit can then be the subject of cross-examination.

This document is in Book 4, page 31. The last document in this field is Document 113. This is by Professor Heilmeyer.

MR. SPEECHER: Mr. President, unfortunately, we are just able to follow this documentation. We first hear about a document number...

THE PRESIDENT: Let's not argue matters of that kind; state your problem and we will help take care of it.

MR. SPEECHER: We would first like to know where Dr. Nelte is going in his document books. If we knew the document book and the page and then, --

THE PRESIDENT: Counsel, let's not take the time of the Tribunal if your situation is entitled to be remedied, if you will tell us where you are confused, we will try to help you.

MR. SPEECHER: I do not know how many have gone in since we were confused. I think it was the document before last, and we never did find ourselves in the document book.

THE PRESIDENT: The last one introduced, as we understand the record, is in Book 4, index is the second page at the bottom, document 108, which went in as Exhibit 72. That was the last one.

Are there any back of that that you are confused about?

MR. SPEECHER: That is where we got lost.

THE PRESIDENT: Very well.

DR. NELTE: The next document is in Book 5. As I understand it, you do not have this book yet.

THE PRESIDENT: We have it.

DR. HELTE: Do you have a supplementary document to book 5? That is on the last page, from Professor Hailmaier, Document 113; that is not in the index, Your Honors, because it was supplied belatedly.

THE PRESIDENT: The last one we have is 111, in that book.

DR. HELTE: Then you do not have the document 113 yet. I have already received it in German; I was told that the English was also available.

Mr. President, this is not very long. I can merely refer to it. Professor Hailmaier is an internationally known and recognized doctor from Freiburg. I asked him a question, "Is it customary that a preparation tested in animal experiments, according to the most advanced medical methods, should be used by the clinician only with the approval of the patient; and, secondly, under observation of the rules set by you could the drug be one of three developed at the plant at Elberfeld, be subject to clinical tests, and can it be used by the doctors for testing?"

Professor Eutonadt answered this question from the standpoint of chemotherapy. Professor Hailmaier is a doctor, a medical man, and internationally recognized as a medical man, and he answers this question from the medical point of view.

I ask that this document be accepted as Exhibit 73. First of all, I should like to offer it merely for identification until the English translation is received.

THE PRESIDENT: Now just a moment, Dr. Helte. Your book 5 is before us and the last exhibit in the book, the last document in the book is your Document No. 111. This morning you offered, as Exhibit 52a, Document 112 which we have added to the index of your book. Now we understand that you are offering in addition, your Document 113, as your Exhibit 73 for identification.

Now that keeps the record straight, except this. Don't forget to see that the Tribunal ^{and} the Prosecution receive English copies of your Exhibits 52a and 73 so that we will have our record complete and straight. If you will keep that in mind, very well.

Dr. Holto: Very well, Your Honor.

Q. Professor Hoorlein, you have stated under oath, that you did not suggest that preparations be given to Dr. Vetter for testing, and that you did not learn that Dr. Vetter treated concentration camp inmates and in that way, tested Elberfeld preparations. The Prosecution now contends that you did not this, and therefore I must put to you the documents which have been submitted by the Prosecution in the belief that these documents were brought to your attention, and also that the knowledge of the contents of these also allows a definite conclusion of the alleged criminal activity of Dr. Vetter.

These documents are in Book 87. I have given them to you, and you studied book 87, and now I ask you, do the documents which were given to you, and which you examined, give the certain time or the conviction that Dr. Vetter performed any criminal experiments in Auschwitz; that is, infected healthy concentration camp inmates in order to subsequently treat them therapeutically with B-1034?

A. Dr. Vetter was condemned to death in a trial at Dachau. As was found, he was not condemned for illegal medical experiments. One would think that that would be the case, if he had performed any such experiments.

MR. SPEECHER: Mr. President, you recall that this matter came before us once before, and if it is improper, it cannot come up merely by way of the voluntary declarations of the defendants.

Dr. Vetter was not tried for medical experiments. He was tried for something else, which had to do with concentration camp inmates, but not for medical experiments.

THE PRESIDENT: The witness and the Prosecution having agreed

on that, I think, Dr. Nelte, that you can pass that part of the inquiry and get to the substantive matters.

DR. NELTE: Does the Prosecution also say that it has not been proved that Dr. Vetter performed criminal experiments?

MR. SPEICHER: No, indeed. If Dr. Vetter had been tried for his acts at Auschwitz instead of Dachau --

THE PRESIDENT: Gentlemen, you are both out of order in discussing matters that are not before this Tribunal, and of no concern. We are not trying Dr. Vetter, and we are not trying what happened at some other place, or in some other proceedings.

As another question, Doctor, and let's get away from this.
BY DR. NELTE:

Mr. President, the Prosecution has offered Documents from the prisoners doctors, Doctor Tondos, Exhibit 1715, NI 12452, Document Book 87, page 77, and this page 63; Dr. Feikel, Exhibit 1716, Document Book 87, page 85 in the German, and 67 in the English; and Exhibit 1717, Document Book 87, German page 87, English page 69.

The Prosecution offered these documents in order to prove that Dr. Vetter in Auschwitz used Farben preparations in this case B-1034, to perform criminal experiments.

Do you know these three documents, Professor Hoerlein?

A. Yes.

Q. Will you please comment on them?

A. All three doctors worked in the prisoners' hospital of the concentration camp Auschwitz, in Block 20. Dr. Tondos in the tuberculosis department; Dr. Feikel in the typhus station, and Dr. Kledzinski at a general department for contagious diseases, at which typhus, typhoid, erysipelas, tuberculosis, scarlet fever, etc., were treated.

Q. Please look at page 79. Dr. Tendos, on page 79, makes the following statement incriminating Dr. Votter, which is quoted on page 83 in the trial brief. It reads: "In 1942, SS doctor Helmuth Votter arrived in the concentration camp at Auschwitz. My fellow doctors amongst the prisoners knew him from before the war, when Votter was a representative of the Bayer, and traveled in Poland, advertising various preparations of his firm. After his arrival various previously unknown preparations, such as Ruthenol, etc., the names of which I cannot recall, began to be used for treatment, at first of typhus.

In order to test these new preparations healthy prisoners were infected and given blood transfusions from the sick, the amount being 5cc's. These infected prisoners had been treated with new preparations. These preparations were all produced by the Bayer Firm. We noted on the basis of our observations that these preparations did not cure typhus and the majority of the patients died." I must say that there will be an affidavit to show that Dr. Vetter never travelled in Poland. I shall also remark that the last sentence quoted does not allow the conclusion that the patient died because they were treated with these preparations which are not mentioned by name. It rather seems to me that the patient died because the preparation had no effect or could have no effect. Significantly, the prosecution quoted is incomplete. The following sentence reads as follows: "I do not know any details concerning the doses and the course of the disease because we did not come in contact with the treatment of typhus with these preparations. The Dr. Tondos and Feikel are well informed on this subject." This shows that Dr. Tondos does not speak of alleged experiments from his own knowledge.

Q Now, what did the other two doctors testify under oath?

A The testimony of Dr. Feikel —

MR. SPEECHER: Mr. President, I think that what these gentlemen testified to is shown by what they testified to.

THE PRESIDENT: That's true. There's no occasion to burden the record by repeating or quoting what was contained in their testimony or affidavits. It will be sufficient, Dr. Nelte, if you will call the attention of the witness to the part of the testimony that you wish him to comment upon and then let him say what he has to say with respect to it and you may do that with reference to the next witness by calling his attention to that part of the testimony that is contained in the Prosecution's brief if you wish to do that because we all know exactly what you have in mind if that fits to the subject of your enquiry.

Q Prof. Hoorlein, from the testimony of Dr. Feikel — I merely want to put something to you. You have this testimony before you?

A Yes.

Q This testimony shows that in contrast to the contention of Dr. Tondos he does not speak of patients artificially infected with typhus but "patients" who are suffering from this disease. Does it say that?

A Yes.

Q And does he treat these patients with the preparation?

A Yes.

Q What conclusions do you draw from that?

A I see that it wasn't an experiment but this is a clinical test under medical care.

Q I see, first of all, he treated 50 patients with B-1034 and later 50 patients with 3582. Is it true that, as you can read, "after determining the diagnosis of this preparation when administered in a case of this kind, it can only be considered as treatment?"

A No other interpretation is possible.

Q Now, in this connection, Mr. President, I would like to recall, perhaps in the Dr. Klodzinski affidavit, case histories are mentioned and I assume that the Tribunal will recall that in submitting this document I asked the Prosecution to submit these case histories which Dr. Klodzinski gave to the examiners or to make them available to me because these case histories are the decisive document. From them we will be able to see whether these patients were artificially infected or whether they were really sick and were then being treated. I hope that the Prosecution will make these case histories available to me in the course of the case. Up to now this has not been done.

MR. MINSKOFF: This same question has arisen three or four times now, if the Court please, and just so the record will be perfectly clear as to what occurred here I would like to say; we have never seen the exhibits referred to; we didn't take the affidavit. It was sent from Poland. That was true of all three of the documents which are before the Court. We did say that as soon as we get them, of course, they would be made available to the defense; we would even introduce them in evidence. More

than that, the witness himself testified that he personally witnessed the artificial infections and he was before the Tribunal and was available for examination by the defense and the examination was waived by the defense and now having waived the witness, to keep raising the question of the documents referred to as having been in our hands when they know they have not been in the Prosecution's hands —

THE PRESIDENT: Lest we have confusion; we are having too much in the way of an argument here. It will suffice, the Prosecution has said it doesn't have the documents which you have requested, Dr. Nelte. If it gets them they will make them available to you. Now, that's a complete answer of the situation.

MR. SPRECHER: Mr. President, I might point out that the Secretary General and Your Honors are welcome on application from Dr. Nelte to undertake any independent steps you can on behalf of Dr. Nelte and the Prosecution will be most pleased.

THE PRESIDENT: Very well.

DR. NELTE: Mr. President, I merely want to say that, in my opinion, that until these case histories are brought forth the Prosecution cannot assume that it has proved that the patients were artificially infected. It is not my task ...

THE PRESIDENT: We are not now arguing what has or has not been proved; at the proper time we are going to give you ample opportunity to discuss what the evidence does or does not establish. Let us limit this now to your evidence. Go ahead and interrogate your client upon the stand.

Q. Professor, I have already said that I must show you some documents offered by the Prosecution from which the Prosecution believed that they are justified in concluding that an expert must have known from these documents that Dr. Vetter had performed criminal experiments on involuntary concentration camp inmates. Since I intend to examine Dr. Luecker on these questions I shall not burden the direct-examination with this subject. I shall merely ask you; do you recall the presentation of letters

or reports coming from Dr. Vetter?

A No. Dr. Vetter did not correspond with me or with the head of the Elberfeld Laboratories directly and I do not recall that any written report of Dr. Vetter's was sent to the Scientific Department and that I received a copy of it. It is possible that Dr. Mertens or one of his associates such as Prof. Kikuth or Dr. Mietsch discussed it. It is also possible that Dr. Mertens on one of his visits spoke of reports received by Leverkusen from Dr. Vetter. I wish to make the situation quite clear; today Dr. Vetter is the center of the discussion, then he was a very young worker, a blank page. If his name was mentioned in passing, at any rate I did not remember it.

Q In order to make this subject clear, I ask you to look at Book 87. I will point out to you the various letters which have been offered by the Prosecution and you will tell me whether you have ever seen this letter or why you did not see it. Book 87, page 7 in the German and English text, Exhibit 1692, NI-9402, letter from Dr. Vetter from Dachau.

A This is a private letter of Dr. Vetter's to his friends in Scientific Department I. There are some "Illegible handwritten notes" mentioned in the copy, but I saw the photostat of this letter, and I saw that they were the initials of the employees of Department I. This shows that this letter was not even addressed to Dr. Mertens, the head of the whole Scientific Department because Dr. Merten's initials are not on it. Since Dr. Mertens alone came to me from time to time he could not have reported this letter to me.

Q The second letter is on page 9 and page 8 of the English, Exhibit 1693, NI-9823.

A This is the answer of Dr. Vetter's comrades to the previous letter: this is a purely private letter.

Q Did it come to your attention?

A No, it did not. I remark that all preparations mentioned were all commercial preparations available in my pharmacy and which could be used by any doctor.

Q. The next letter is on page 11 in the German, page 10 in the English Exhibit 1694, VI-9403.

A. The first sentence of this letter shows that it is an answer to a private letter from Dr. Vetter to Dr. Barmel. Dr. Barmel is an employee of Department I. The documents which were sent are on commercial preparations which is shown from the fact that Dr. Vetter is told that if he needs these preparations he can get them from the pharmaceutical office in Munich.

Q. And the next document is on page 15 in the German, page 13 of the English Exhibit 1695, VI-9404.

A. The first sentence again shows that this is an answer to a private letter from Dr. Luecker, who will appear here as a witness. This letter too is a private letter.

Q. You Honor, in addition to these letters there are no other letters affecting the preparations from Elberfeld. The other documents in Book 87 are file notes, about telephone conversations and talks with Dr. Vetter when he was at Leverkusen. I shall ask Dr. Luecker about these matters. Now, this Document Book contains other documents affecting the correspondence of Hochstet with the Scientific Department. You have read these documents, too, at my request and I now ask you would you on the basis of these letters from Leverkusen as well as on the basis of the oral reports recorded in the file notes believe that Dr. Mertens, Dr. Luecker and Dr. Koenig had knowledge that Dr. Vetter in the concentration camp had performed inadmissible medical experiments on concentration camp inmates?

A. Everyone lives in a certain world of imaginations and what he cannot imagine is impossible for him and these horrors that happened in the concentration camps, none of us could imagine. The men of the Scientific Department had the idea of the clinical tests and the medical trials. If they gave preparations to Dr. Vetter, if they were given to a tester they could only imagine that he would act as a conscientious doctor, which they believed Dr. Vetter was. That is, that he would have treated sick people with the preparation which had been already tested.

Q. I must ask you the same question which I asked Prof. Butenandt; whether certain words in those letters, such as Versuch, Versuchserihe and Versuchsperson, experimental subjects and compatibility gave reason to assume that Dr. Vetter was performing experiments deviating from treatment by way of therapeutical tests?

A. Prof. Butenandt spoke in such detail on these terms. In order to avoid delaying the proceeding I shall discuss them merely by saying "no", without going into any detail.

Q. But you support the answer of Prof. Butenandt on your oath as your own answer?

A. Yes, that's the opinion of every decent scientist and every decent human being.

Q. In your opinion would that be using a drug which had been tested on animals and applying the dosage as found in the experiments be medically inadmissible if applied to concentration camp inmates?

A. No, and to support my opinion I should like to quote the statement of the Prosecutor McNaney in the medical case who stated as follows.

MR. SPEECHER: Mr. President, I think there's been an awful lot of brief material through the witness...

THE PRESIDENT: Are you objecting?

MR. SPEECHER: Yes.

THE PRESIDENT: The objection is sustained.

Q. No, Professor. My opening statement has informed the gentlemen about the statement by Mr. McNaney and therefore it is not necessary for you to quote it again.

Would you not believe that the circumstances that Dr. Vetter was an SS doctor in a concentration camp would have made the gentlemen at Leverkusen hesitate?

A. That would presume that all doctors working in a concentration camp were considered criminals. The Prosecution has tried to present that point of view that everyone in Germany knew what went on in the concentration camps. That is a mistake. They confuse subsequent knowledge with former knowledge.

Q. What did you personally know about the concentration camps?

A. I know the names Dachau and Auschwitz.

Q. What impression did you have of what went on there?

A. I had no exact idea. I thought only that it would not be pleasant because being locked up is never pleasant, but exactly what went on there I never learned.

Q. Did you know that there were so-called Medical Blocks in the Concentration camps in which medical experiments were performed on and with concentration camp inmates?

A. No, I did not. I had not even heard such a rumor, and neither had Professor Butenandt, as he said yesterday.

Q. To come back to the knowledge of the Scientific Department at Leverkusen, through which you could have obtained knowledge of the experiments of Dr. Vetter, did the letters or reports sent to Leverkusen which we have heard of and which you have read contain any positive indications that Dr. Vetter in Auschwitz or elsewhere perform inadmissible experiments?

A. These letters and reports, in my honest opinion, contain no positive indications of that.

Q. When Dr. Mertens reported to you did he ever express any suspicion that Vetter was perhaps doing something that was not quite right?

A. No.

Q. Then you state under oath that at no time did you receive any information giving you knowledge of the fact that Dr. Vetter in a concentration camp had performed medically inadmissible experiments on concentration camp inmates?

A. Yes, I state that on my oath.

DR. HELTE: Mr. President, this concludes the direct examination.

In connection with this last subject I offer the following documents as evidence of the high sense of responsibility of Professor Hoerlein in the development of new preparations. Document 29—

THE PRESIDENT: In what Book, Dr. Helte?

DR. HELTE: Mr. President, the Prosecution wants me to mention the Exhibit number first, and then the book.

THE PRESIDENT: All right. Accord to the wishes of the Prosecution in giving them to us.

DR. HELTE: Document 29, I offer as Exhibit 74. It is in Book III on page 129. It is the affidavit of Dr. Loth, who was in charge of the chemical matters in the Elberfeld Plant, who speaks of the high sense of responsibility of Professor Hoerlein and the conscientious execution of his work.

The second Document is Hoerlein Number 18, which will be Exhibit 75, Book III, page 132. This is the affidavit of Professor Wessé regarding Hoerlein's strong sense of responsibility in the development of new preparations. Professor Wessé is one of the three closest associates of Professor Hoerlein, and you will hear him as a witness this afternoon.

Document Hoerlein 28 is offered as Exhibit 76. It is on page 141 in Book III and is the affidavit of the Professor of Theology Thielicke

is now one of our most important theologians in the University of Tuebingen. As a student of Cologne he had a serious glandular infection which was expected to be definitely fatal. The discovery of the drug AT-10 and the responsible use of this unusual drug, is testified to by Professor Thielicke; he says that he owes his life to Professor Hoerlein.

Document 27 is offered as Exhibit 77. It is in Book III, page 144. It is an affidavit of Professor Dr. Reiter, the head of the Health Office, who speaks about Professor Hoerlein's strong sense of responsibility toward the public and public welfare.

Then on the question of secrecy regarding everything connected with concentration camps, in proof of the lack of knowledge of these matters, I offer several documents without reading them -- merely in evidence of the lack of knowledge of these matters, I offer several documents without reading them -- merely in evidence of the lack of knowledge which has been alleged not only by Professor Hoerlein but by others, too. Document 95, Exhibit 78, Book IV, page 38. This is an excerpt from the book, "The SS State," the system of the German concentration camps, by Eugen Kogon, a book which has been presented here by the Prosecution for the information of the Tribunal.

Document 44, an excerpt from the official German version of the IIT Trials, Volume I, page 382, showing that the first big Tribunal in Nurnberg attributed even to the propaganda man Hans Fritzsche the belief that he knew nothing about the mass extermination in the East.

Document 89 will be Exhibit 80. This is an excerpt from another book, "Doctor's Clerk in Buchenwald," by Walter Poller. I have the whole book for the Prosecution, unfortunately, only in German and I will be glad to give it to the Tribunal so that you can check and see that the excerpts given here are true excerpts from the book. Convincing statements are made to the effect that people in the concen-

tration camps said, "If we tell about this outside, nobody will believe it. Nobody can believe it. What can we do to make people believe the truth?"

The next document is Document 100, Exhibit 81. It is the examination of the witness Krugowsky by myself in the Medical Trial on the secrecy question. The excerpt is certified by the Secretary General.

The next document is an excerpt from the record of the session from 1 April 1947 of the Medical Trial. That is Document 101, which will be Exhibit 82. You will find it in Book IV, page 42. This is the examination of the witness Dr. Horn by the Tribunal.

Document 102 is the examination of the witness Dr. Hielscher in the Medical Case by me. Document 102 is offered as Exhibit 83, Book IV, page 43.

THE PRESIDENT: We will take our recess at this time, Dr. Nelte. Just a moment. Do you wish to be heard, Counsel?

DR. LAMBERT: Dr. Lambert for the defendant Kuehne.

THE PRESIDENT: He will be excused from the dock for the balance of the day.

The Tribunal will now rise.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Just a moment please. The record will show the presence of the defendant Schneider in court as of this time.

DR. FLASCHNER: Mr. President, I should be grateful to you if my client can be excused from participating in court tomorrow and on Friday so that I can have an opportunity to prepare his defense.

THE PRESIDENT: The defendant Sautofisch will be excused on his own application. Now, gentlemen, that brings to mind a subject that we may as well discuss just for one moment now. This courtroom will be in use by another Tribunal on Thursday morning. We are told it will be in use until noon, and we will have it available Thursday afternoon. The Tribunal is quite firm in its intention of not losing this time. We had in mind, if necessary, to hold a session on Saturday forenoon. As an alternative to that we wish to make this suggestion to counsel for the defense and it is only a suggestion and there is in no sense any compulsion connected with it. We think we can get another courtroom that will perhaps accommodate fifteen or sixteen defendants. Now, if the defendants and their counsel can agree among themselves to have some who are not primarily interested in the current phase of the case ask to be excused for Thursday forenoon so as to reduce the number of attendants in the dock to the accommodations that we have, we shall hold a session on Thursday morning and excuse enough of the defendants so that they can be comfortably seated in the limited quarters. Now, you may use your own judgment and discretion as to whether or not you wish to avail yourselves of that. We recognize and will recognize the right of the defendants to be present. However, if you would prefer that some of the defendants remain away on Thursday morning, perhaps to work on their books or for any other reason so as to reduce the number who are in attendance to the capacity of our limited quarters in another room, we will have the session on Thursday morning and obviate the necessity of a session on Saturday noon. You may make your wishes known in the morning or tomorrow sometime, if you will.

DR. BELTZ: The defense counsel of the individual defendants have charged me with asking the Tribunal to ask for the absence on Thursday of the defendants Baergin, Baetofisch, Duerffeld, Kugler, Schneider, von der Heyde, and Ambros. With consideration of the defendants who are sick, the absence of those defendants should make it possible that the trial could proceed in a smaller room.

THE PRESIDENT: Very well, that will soon to immediately solve our perplexing problem and if there is any change whereby you wish to ask that another defendants be excused or withdraw your request for the absence of one that you have named, there need be no embarrassment about that. We will leave it flexible until the end of tomorrow's session and then on the record excuse enough of the defendants to bring the attendance within the limitations of space.

DR. NATH (Counsel for Deft. Ilgner): Mr. President, I have just been informed that my client Dr. Ilgner will have recuperated tomorrow and that he will be able to come back tomorrow. However, on the other hand, I should welcome it if he would be permitted to stay away from proceedings tomorrow in order to be able to prepare his defense. If he could therefore also be excused from tomorrow's sessions, I should be very grateful. On the other hand, may I ask that he be permitted to be excused at a later time once more for one or two days?

THE PRESIDENT: Very well; your client will be excused from attendance tomorrow.

DR. NIELTE: May I proceed, Mr. President?

THE PRESIDENT: Go ahead.

DR. NIELTE: I had last introduced here Hoerlein Document No. 102 as Exhibit No. 83, in Book 4 on page 43. I shall now offer Hoerlein Document No. 90 as Exhibit No. 84, found in Book 4, on page 48. It is a document from the Pohl trial which was offered, and accepted, into evidence, an affidavit of August Heine. In this document he speaks about the system of keeping matters in the concentration camp secret. The same applies to Document 91, which I offer as Exhibit No. 85, in Book 4 on page 50. It is an affidavit of the Oberlandesgericht Dr. Kuehn.

Hoerlein Document No. 92 offered by me as Exhibit No. 86, to be found in Document Book 4, on page 52, is a very interesting affidavit of the former SS judge Dr. Konrad Morgen. He also swore out this affidavit for the Pohl trial and it was also accepted into evidence in the course of the trial.

Mr. President, in regard to paragraph 128 of the indictment, I have to say that it is stated therein, and I quote: "In all enterprises and plants of Farben in which slave labor was introduced, a sub-human standard of living was the established order. Inadequate food rations, overcrowding, and so on..." This is a general accusation against all enterprises employing foreign labor. With regard to the Elberfeld plant,

the chief of which was Hoorlein, Document NI-7513, an affidavit, was provided. However, the Prosecution did not submit this document. You will find it in Document Book No. 70. I see myself forced now, because of the general nature of this accusation and because of the collective responsibility to offer new evidence as a precautionary measure to the effect that in Prof. Hoorlein's plant in Elberfeld all these prerequisites were not applicable. For this purpose I submit into evidence Document Hoorlein No. 88 as Exhibit 87, on page 1. I shall not read from this document. The affidavit is by the physicians in charge of the medical care and treatment of foreign labor in Elberfeld. The second document is Hoorlein Document No. 103, as Exhibit No. 68, in Document Book 5, on page 3. This is the affidavit of Dr. Werner Grab, a physician, who worked as a nutrition physiologist, based upon written data which are almost without a break in continuity about the feeding of foreign laborers in the Farben plant at Elberfeld.

I then offer Document Hoorlein No. 105 as Exhibit No. 69. You find this in Book 5 on page 7. This is the affidavit of August Arnsperg who dealt out the food and who was responsible for the care and control of western workers. He states in detail that these foreign workers were treated just like German workers.

The next document No. 104, offered as Exhibit No. 9, is in Book 5, on page 9. This is the affidavit of Heinrich Blaszyk, an employee of the War Security Police in Elberfeld. He was in charge of the supervision of camps for foreign labor at Elberfeld plant of the French, Belgians, Dutchmen and Danes, on the one hand, and the Eastern laborers on the other hand.

Hoorlein Document No. 106 will become Exhibit No. 91 to be found in Document Book 5, on page 12, an affidavit of Frau Ella Schwarz, a cook in the works' kitchen of the Elberfeld plant. She confirms that the food turned over to her was not spoiled, was appetizing and clean, and that it was well prepared. The last document in this connection is Hoorlein Docu-

ment No. 107, an affidavit of Frau Klara Elender, head of the workers' kitchen for the Polish and Russian workers. This is a supplementation about the count of the indictment regarding medical experiments.

I submit Document 79, Exhibit 93, in Book 4 on page 24. This is an affidavit of Dr. Koenig who has been mentioned several times, which however refers to the letter submitted by the Prosecution in Document Book 85, and Book 87, as Document MI-11417.

MR. SPEECHER: Excuse me, Mr. President, we got lost with respect to the exhibit numbers being given, back with document 107, I think.

JUDGE MORRIS: It should be 92, shouldn't it?

MR. SPEECHER: Judge Morris, I think so myself, but I didn't hear it so I am a little confused...

THE PRESIDENT: Just a minute now. He will get this straightened out. 107 is Exhibit 92, and Document 97 is Book 4 is Exhibit 93. Is that right, Dr. Helzer?

MR. KATZ: Yes, Your Honor, that is correct.

THE PRESIDENT: You can go ahead.

DR. HELTZ: At the end I shall submit, in order to judge Prof. Hoorlein's personality, the following documents. Hoorlein No. 109 as Exhibit No. 94, an affidavit of the renowned Dr. Demagk, a winner of the Nobel prize, who collaborated for many years with Dr. Hoorlein, and who can evaluate his personality.

Hoorlein Document No. 26 offered as Exhibit No. 95 in Book 5, on page 17, is the affidavit of Frau Irene Claassen Young, a citizen of the United States, working with Minthrop Chemical Company, New York, who had been working there in Rensselaer, New York, and who knows Prof. Hoorlein. The Tribunal will recall that this lady directed the affidavit to the Tribunal and that I received this excellent testimony through the mediation of the Tribunal.

I refer to this without quoting from it.

Document No. 20 will become Exhibit No. 96, to be found in

Book 5 on page 24, an affidavit of Prof. Dr. Gross whom you have heard here as a witness, who testified about Dr. Hoorlein as being his superior and associate, as president of the Medical Commission and as chief of the Industrial Hygienic Institute, and who states that Hoorlein granted his fullest cooperation to him at all times, and who says that he subordinated the commercial interests to those of science and medicine.

Document No. 5 will become Exhibit No. 97, to be found in Book 5 on page 29. You will find that this is an affidavit of Benno Reifenberg, a former associate on the Frankfurter Zeitung who is now the editor and publisher of the bi-monthly called "Die Gegenwart." He states that Prof. Hoorlein had helped him when he lost his position because of measures of the Propaganda Ministry and when he was without funds.

Hoorlein No. 110 will be offered by me as Exhibit No. 98, to be found in Book 5 on page 37.

This is a certified letter of the physician Dr. Ludwig Taub, from Rehovot in Palestine, who was an associate of Professor Hoerlein for 30 years, and who describes him as he really is.

Hoerlein Document No. 33 will become Exhibit No. 99. This is an affidavit of Dr. Karl Freudenberg, Professor of Chemistry at the University of Weizelberg. He also has known Professor Hoerlein for 30 years, and he has to be grateful to him for many things, and he says that Science too has to thank Dr. Hoerlein for many achievements.

Hoerlein Document No. 15 will become Exhibit No. 100. This is to be found in Book 5, on page 49. This is the affidavit of the Catholic clergy Heinrich Rembold. Although Professor Hoerlein is not a Catholic, according to this generous word of this Priest, he helped more of the needs of the community unanimously, and he prevented the Old Peoples' Home from being appropriated by the Party.

Hoerlein Document No. 31 will become Exhibit No. 101, to be found in Book 5, on page 51. It is an affidavit of the two secretaries of the defendant, Professor Hoerlein. Professor Hoerlein was not a simple superior, and therefore he asked and applied a strict yardstick to his employees as well. He experienced many times that he also endeavored to be just.

Hoerlein Document No. 30, the last document is going to be Exhibit No. 102, to be found on page 54, in Book 5. It is the affidavit of Studienrätin Melchold who has known Professor Hoerlein for 35 years, and who worked with him in the Democratic party. She testifies that even during the years 1933 to 1945, he expressed himself for a Liberal and a Humanitarian Policy.

This concludes, momentarily, my evidence, and I ask that I be permitted to examine Professor Joosse, and offer any additional exhibits by other counsel.

JUDGE MORRIS: Just a moment. Your Exhibit 95, being your Document No. 26 for the Defendant Hoerlein, I find I have a German copy bound in the book. I wonder if I might have an English copy of that?

DR. KELTZ: Very well, Your Honor. I shall see to it that you get an English copy.

THE PRESIDENT: Just before you go to something else, going over these books, it appears that there are a number of exhibits in your books that you have not offered in evidence. Is it your intention to take that matter up subsequently and offer these additional exhibits, or are they to be considered as withdrawn or just what is your disposition?

DR. KELTZ: Mr. President, during the examination of the witness, Dr. Lurker, I shall offer some of these documents.

THE PRESIDENT: Very well.

Now you wish a witness produced at this time? Unless there is some reason why you wanted to call a witness especially, if that is not necessary, we had better stay with the regular procedure, and the defendant Hoerlein is now subject to examination on behalf of any of the other defendants.

DIRECT EXAMINATION

DEFENDANT HOERLEIN

BY DR. DUBER (Counsel for the defendant Gattinocci):

Mr. President, I have only a few questions.

Q. Professor, you reported about the difficulties which you had with the Party about the struggle which you had to wage against Streicher in particular. During your actions did you have anything to do with party people?

A. Yes, of course. In order to make, "The Health of People" disappear from this work, "Blood and Ground", I had to deal with the Reich Leader of Physicians. I had to see to it that this horrible paper would be forbidden, and after the paper was then published under Streicher's own management, it was even more difficult to make this paper disappear.

I could have this done only by proving to the Propaganda Ministry that this loose paper actually contained forgeries because the remedy Bayer 205 was ascribed with certain effects which it did not have, in order to

achieve this I had to speak to the medical adviser of Dr. Goebbels at the Propaganda Ministry.

Q. Did Dr. Gattineau get these connections with the Party people?

A. No, no not at all.

Dr. Gerhard Wagner tried to retain his scientific position, and he established certain contacts of a scientific nature, and I went to see him personally. Dr. Heintz, the Medical Adviser of Goebbels, I contacted, through the medium of Dr. Burg, the Chief of the Pharma-Bureau in Berlin.

I had nothing to do with Dr. Gattineau.

Q. Did Dr. Gattineau get you in touch with any leading personalities at all.

A. No.

DR. DUEHR: Thank you very much.

BY DR. TUBERCK, Assistant to Dr. Berndt, counsel for the defendant Mann:

Q. Herr Professor, yesterday you mentioned Contract No. 2, with Rhono-Poulenc. Would you please be kind enough to tell me briefly the essential contents of this particular second contract with Rhono-Poulenc?

A. This Contract No. 2 was discussed at the end of February, 1940,-- at the end of February, 1941. It was laid down in a correspondence during March and April, 1940. The essential text is the mutual exchange of our new discoveries between Farben and the firm of Rhono-Poulenc, in the Pharmaceutical field.

The contract was already envisaged by Dr. Mann before the first contract was drawn up. Through this contract Rhono-Poulenc was to have the sole sale of Farben products in France, and vice versa: Farben was to have the sole sale of new products of Rhono-Poulenc in Germany.

Q. Professor, how do you evaluate the value of such a promise of Farben to Rhono-Poulenc?

A. I consider this of very great value. Our Laboratories had discovered a larger number of pharmaceutical discoveries in the past than had Rhone-Poulenc.

Q. Then the assumption was justified that this would be the same in the future, and therefore the advantage would be very much on the side of Rhone-Poulenc?

A. The firm Rhone-Poulenc automatically and legally gave possession of our new products in the pharmaceutical sector, and did not have to try to imitate our products. This promise in Contract 2 was certainly full compensation for the services laid down in Contract One offered by Rhone-Poulenc.

I may add that we concluded only one similar contract with another country, and that was the United States, with the firm of Parke-Davis Chemical Company in New York.

DR. TURNER. Thank you very much, Professor.

THE PRESIDENT: Anything further from the defense counsel?
The Prosecution may cross examine.

MR. SPEECHER: We are prepared to go along with the cross-examination but Dr. Helte had asked us as a favor if he might bring this one witness. I originally had thought, that is, Dr. Helte and the Prosecution, that we could finish this witness this afternoon. I think that would be impossible but I asked Dr. Helte what his choice is under the circumstances and unless Your Honors desire not to have any interruption in the examination of this defendant --

THE PRESIDENT: If you gentlemen can agree upon the program it's perfectly agreeable to the Tribunal.

MR. SPEECHER: May it be understood then that after this next witness, Prof. Weese or Dr. Weese, that the defendant Hoerlein will return to the stand for cross-examination?

THE PRESIDENT: Then the defendant Hoerlein may step aside for the time being and the marshal will bring in the witness announced by defense counsel.

HELMUT WEESE, a witness, took the stand and testified as follows:

THE PRESIDENT: The witness will remain standing for the purpose of being sworn, raise his right hand and say "yes" and repeat his name.

THE WITNESS: I, Helmut Weese.

THE PRESIDENT: Now please repeat after me the oath. I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing. (The witness repeated the oath.) The witness may be seated.

DIRECT EXAMINATION

BY DR. HELTE:

Q. Prof. Weese, when were you born and where?

A. In Munich in 1897.

Q. What did you study?

Q. Are you specializing in some branch of medicine?

A. I studied pharmacology with Geheimrat Strauch in Munich, the most leading pharmacologist and the strongest of our branch in science.

Q. When and how did you come to Elberfeld?

A. In 1928 Prof. Hoerlein came to Munich to get a successor for his pharmacologist Prof. Eichholtz and he asked me whether I would be prepared to take over the job. I was inexperienced and was not able to get a clear picture of the position. Therefore, I asked Geheimrat Strauch should I go to Elberfeld. Geheimrat Strauch said you have to go with Hoerlein to Elberfeld; that was the best position I could have in Germany. I accepted as a result and in 1929 I went to Elberfeld where I took over the direction of the pharmacological institute.

Q. Were you active internationally?

A. I gave lectures in many countries of Europe about my own branch and about my own work. In 1938 I was invited to come to the United States by the International League of Anesthetists in order to demonstrate with narcosis. Then I was asked by the Medical League to speak about the same subject. I made a round-trip lasting weeks being invited to several places in the United States to speak about my own work.

Q. Were you a professor of a University?

A. For two years I had been the Ordinarius for Pharmacology in Dusseldorf. I accepted that position only under the condition that I would be able to retain my Elberfeld activities. This request was not only granted but it was even desired by the faculty in Dusseldorf and by the Government.

Q. Did you belong to the Party or any of its affiliated organizations?

A. No, never.

Q. You were the director of the Institute of pharmacology in the Farben Plant at Elberfeld?

A. Yes.

Q. Did you have a fixed position? That is to say, were you obligated to do research according to the definite directives?

A. My research activities by reason of Prof. Haeurlein's approval of my engagement was completely free during my 19 years of activity there. Prof. Haeurlein over and again said "you have to know yourself; what you must take on this responsibility." That is what I went by.

Q. There seems to have been some error in transmission. The interpreter said as I am told, he forgot to translate the narcosis that I found. What you said for yourself, does that also apply for the colleagues who worked for you in the various institutes in Elberfeld?

A. The same thing.

Q. Professor, would you please quite briefly and as concretely as possible tell me how a new remedy is developed?

A. It may be developed when a chemist has discovered a new material, a new substance, which was analyzed pharmacologically. It may be the result of an ideal of a medical man who may give the necessary instigation to the chemist. This was true, for instance, in the case of the ovarian narcosis. As a student in Munich I was still able to witness the intoxication due to ether narcosis as a very unpleasant narcosis where the patient is almost throttled with a large mask in which ether is poured. It is more asphyxiation than an anesthetic. When I was in Elberfeld I was able to improve this process or to eliminate it altogether. I found a sleeping tablet that didn't harm. It had an immediate effect. I said to myself if this sleeping powder is dissolved and injected into the blood stream it must bring about a quick and harmless narcosis. This was a dis-

covery of the AZF narcosis and all of the other intravenous and are only the result of this one and that can be seen from any of the present operating rooms. Another example; in the beginning of the war I was the advising pharmacologist in the Army. There were many soldiers who were bleeding severely. In the field it is impossible to administer 100 blood transfusions simultaneously. Therefore, in order to replace the loss of blood cooking salt was injected. It had only a very bad effect. I thought that something new would have to be discovered or we were confronted with the same situation which confronted Behliss during the first World War when during the war he created the liquid rubber solution. We created a clearing solution arising from the same ideas which is, however, much more advantageous in its effect and which is more tolerable and which was used in hundreds of thousands of injections, called Preston during the war and which is still used today.

Q. Besides this particular branch of yours you had a general task to do in Elberfeld for the entire plant. What was that?

A. Pharmacology is closely connected with toxicology. We had the toxicological control for all preparations, whether they were old or new. For this purpose we had worked out an animal test for every preparation conducted on mice or guinea pigs or rabbits. Only if the prescribed number of animals reacted favorably to the quantity of the substance we can't pass the material. Prof. Hoerlein always told us over this test of toxicology every preparation must pass. This was how we conducted our affairs. We needed 20,000 to 30,000 mice annually only for control purposes.

Q. What is the significance of this toxicological check?

A. It would be possible that in a certain material some impurities are contained. It would be humanly possible that some mistake or mix-up occurred through this control. We were absolutely certain that what is contained in the pill or in the vial and which

is labelled is correctly labelled but us in the proper quantity. At the same time we had to work on the complaints and I can certainly testify to the fact that during those 19 years I never found any confusion or mix-up of any preparation. This control was the prerequisite for all of us to be able to sleep easy.

THE PRESIDENT: The Tribunal will recess until 9:30 tomorrow morning.

(A recess was taken until 9:30, 4 February 1948.)

Official Transcript of Military Tribunal VI,
Case VI, in the matter of the United States
of America, against Karl Krauch, et al, de-
fendants, sitting at Nurnberg, Germany, on
February 4, 1948, 0930, Justice Shake presiding.

THE MARSHAL: Persons in the Courtroom will please find their
seats.

The Honorable, ~~the~~ Judges of Military Tribunal VI.

Military Tribunal VI is now in session. God save the United
States of America and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: Mr. Marshal, will you ascertain if all of the
defendants are present in the Courtroom?

THE MARSHAL: May it please Your Honor, all of the defendants
are present in the Courtroom with the exception of Haeffliger, Schmitz,
Buargin, Lautenschlaeger, Krauch, Ilgner and Buetafisch, who are absent
from the Courtroom.

THE PRESIDENT: The record will show the defendants named by
the Marshal to have been excused on their own application from attend-
ance today.

DIRECT EXAMINATION - Continued

DR. HELLMUT WEESE

BY DR. NELTE:

Mr. President, may I first of all offer Hoarlein Document 26 as
Exhibit 95, in Book 5, on page 17. May I hand it to you in quadrupli-
cate in the English language?

This affidavit which was given in the English was translated
into the German in the English document books by mistake.

Q Professor Weese, yesterday afternoon, at the end, you dis-
cussed the question of what significance the investigation of the toxic
contents of drugs had?

A The conclusions that could be drawn from this investigation
are quite self-evident. If there was any toxic content present in the
drug, which might not be favorable for the experiments, then the material

was rejected. If it did not contain any toxic contents then the drug could be further developed.

Q Was there any direct experimentation done by you besides animal experiment?

A I conducted many tests on my own person, but these are not experiments. That is only a control for myself of what I had already discovered.

Q It had the significance that you as the last investigator got the certainty that this particular drug would not have any detrimental effects upon the health of other persons; isn't that right?

A Yes, that was the sense.

Q What was the consequence if you found any toxic condition by percentage, or in any other way; what effect did that have on the drug? You said that it would either be rejected if it was too strong with the toxic content, or that it would be admitted if it was below the limit. What I should like to know is whether these exact findings that you investigated were written down and determined, so that anyone who received this material would know exactly what he had in his hands?

A That was the sense, and that we wrote down in our expose. Now and then acid effects or a poisonous effect might become evident for any drug; even water and table salt are poisonous if they are administered in large doses.

We had to find out how large the differences in the therapeutic doses is to be achieved, and how many multiples of this dose, ten hundred times or a thousand times, would be required to produce a toxic effect.

Q Did the physician who received this new drug, together with your description of expose, know exactly how the drug was compounded, and exactly what chance he might expect of secondary effects, and possible toxic effects?

A It was the purpose of the expose — and that is true of any serious work anywhere in the world — on the one hand to explain to the

physician how a drug has a therapeutical effect; on the other hand it is meant to show him if he administered too large doses, or with what individual hyper-sensitivity he might expect secondary effects, where they become evident first.

Q Could a sick person who was treated with a drug developed in Elberfeld during the clinical test, suffer any damage to his health if the physician observed the regulations about doses and so on contained in the expose?

A So far as is humanly possible to show, this was out of the question.

Q You mean as far as human beings can foresee?

A Yes.

Q Did you have anything to do with the new drug in Elberfeld after the expose had been written?

A Our task was temporarily closed when we had written it. From that moment on, we did not generally concern ourselves with checking the drug any more. We had a passive task to fulfil. We waited until we had reports about the experiences gathered with the new drug, and then we were able to express our opinion about these experiences.

Q In the course of this trial, a few drugs have been mentioned that were developed in Elberfeld: first, those drugs prepared by the Scientific Department in Leverkusen and sent to Dr. Vetter at Dachau. When we discussed this, before your examination, I showed you a list of these shipments to Dr. Vetter.

Mr. President, you will find this list in Hoerlein Document No. 85, in Book 3, on page 75. This document has not yet been given an exhibit number. It will be given an exhibit number during the examination of Dr. Lueckers.

Q Did you have this list and did you make notes from it?

A It is Marfanal tablets, MP powder, Parazon, Prontosil, Eleudron and suppositories, Sulfapyridin tablets, Sulfapyridin suppositories, and Pereston.

Q Could the application of these preparations be considered as a therapeutic test? We are now concerned with the period of August, 1941.

A At that time all of the products mentioned were already on the market, many of them for years; Elendron-suppositories and Sulfapyridin by other firms only for about half a year. There were sufficient experiences, and I would not know of any reason why they should not have been sent to any physician, including Dr. Vetter.

Q Professor, this is not what I would like to know, and what is essential for the Tribunal. I asked you whether the use of these products could be considered a therapeutic test.

A Since these products were already well known on the market, one cannot consider this as a therapeutic test.

Q Now I have to ask you, how do you explain the expression in the correspondence that I also showed you, in which tests are actually mentioned in this connection?

A I can only assume that in the correspondence, the facts were of some importance; that some of these remedies were recently discovered drugs, materials that were not yet so well known on the market, and which were not present in the stocks of the Wehrmacht and other units.

During this stage, this is to say, after the preparation, after the drug has been investigated by clinical tests and has been passed by resolution of the Pharmaceutical Main Conference, one still speaks of tests - even after this stage. This can be understood, because without giving this special and technical significance, a medicine, a preparation is still being tried that has not yet been sold on the market, and that is still called a "test".

Q As a layman I have gained the impression that perhaps some other aspect might be of importance, that is, the search for new uses for preparations that have already been developed. Is that correct?

A That is possible. If a drug has been discovered which has

been recognized as a virus preparation, then such a drug is administered in the case of sickness of a similar nature, not mentioned in the expose.

Q Would this search for a new use be considered a clinical test?

A The word "test" can be interpreted very liberally, with much latitude. Any application of an old drug in a new field is really a test, for when you do this you undertake something that has not yet been done by anybody else, and in the literal meaning of the word, this can be termed a test. However, it is not a test in the sense of the experiment which is to bring new insight and understanding.

Q Can anything happen in such a case which has not yet been disclosed or which could not yet be foreseen in the expose? Perhaps you can illustrate your answer in the case of methylene blue and the preparation B 1034.

A B 1034 was originally a remedy against trachoma. Trachoma is a virus disease. In the case of B 1034, it showed some special effects. Typhus is also a disease and the germ that causes it is not yet fully known. Important physicians dealing particularly with virus diseases tested whether B 1034 would have any effect on patients as motive for this it must be also taken into account that in Germany there was a therapeutical remedy for typhus.

Q I should like to ask you, would it have been possible that in the administration of B 1034, since it was only intended for treatment of trachoma, according to the expose, an effect detrimental to the health of the patient might arise if it were administered to a typhus patient?

A On the basis of my knowledge and experience, I consider that impossible.

Q Is it possible that the drug B 1034, when administered in the prescribed doses for trachoma, is harmless, but when administered to typhus patients it is detrimental?

A It would not be harmful, but it might be thinkable that in the case of a seriously ill person the compatibility might not be so good, as in the case of a slightly sick person.

Q Would you consider that a damage to the health of the patient?

A No, I would not consider it a damage, but one tries to evade the secondary effects. For instance, by not administering this drug as a powder, but in the form of a capsule, or by administering it rectally, or, if it is soluble and locally tolerable by injection. In the case of very seriously ill persons, perhaps a smaller dose would be administered at first.

Q Is that what you call the test as to compatibility in this connection?

A It is the test to see in what form or what type of administration the drug has its best effect.

THE PRESIDENT: Dr. Walte, I am wondering if it would not be possible for you to generalize this line of inquiry a little more, and not go into the intricate details so much, in the interests of time. I suggest that possibility for your consideration, and if you can help us in that respect we'll appreciate it.

BY DR. NELTK:

Q If in January, 1941, a shipment of B 1034 had been sent to a doctor for the treatment of typhus patients would you understand that?

A Certainly, I would even consider such a shipment necessary, since we had to give every possible aid at that time.

Q Is it possible that the administration of B 1034, in the case of typhus patients, might have caused death?

A I consider that too impossible. It is possible that administration of B 1034 could not prevent death, but it seems to me out of the question that it might have caused death.

Q Do you know the expose about methylene blue produced at Elberfeld?

A I do not know it, but I did not collaborate in its drafting because at the time I was not present.

Q Can you give a judgment about this expose, as to whether the dosages prescribed in it are harmful or harmless for the human organism?

A The dosage is harmless, as well known for decades.

Q If in 1942 Methylene Blue had been sent to physicians, would you consider that in any way objectionable?

A No, just as little as the shipments of B 1034; it was impossible at the time to refuse any drug that had any prospect of effect against typhus.

Q Professor, in your affidavit which you rendered jointly with Professors Doanck and Kikuth, you stated that you bear the responsibility for the findings laid down in the expenses. Professor Heerlein stated that he, as chief of the Research Department, of course, also assume the top responsibility for the contents of those expenses. Can you tell me, from your own experience, whether Professor Heerlein took this responsibility very seriously?

A The responsibility was, of course, in the hands of us scientists. I was always very much impressed by the deep sense of responsibility which Professor Heerlein who was our superior felt. He always was of the opinion that a remedy was always some progress in the treatment of persons.

May I give you a brief example? We had developed a calcium preparation called Selvadon, which had its worth, and which had been sent all over the world in hundreds of thousands of ampules. One day we received a report that incidents had occurred in Malaya, I believe three of them fatal, which were entirely inexplicable to us/

Q You are speaking of malaya?

A Yes, in Singapore. Prof. Hoerlein called me in immediately. I was not able to explain it. The drug was unobjectionable and had been proven. Nevertheless Prof. Hoerlein told me a drug which is not necessarily able to save a person's life must not cause the death of anybody. He withdrew this drug from the market all over the world. Six months later I learned by accident that in all calcium preparations, including physiological calcium chloride, which is always present in the blood-stream when it has to be injected as in the case of tuberculosis, etc, incidents occur in some exceptional cases, sometimes even fatal ones but nevertheless, Prof. Hoerlein did not say that we should again ship any Salvarin. I cannot think of any deeper sense of responsibility towards the sick. If the Tribunal will permit me to add to that objective statement, a personal sentiment; for 19 years I worked with Professor Hoerlein. I refused a call to the University of Munster in 1936. It is my fervent desire to continue to work with this honorable just, and honest man, who has made a unusual contribution to science and who is destined to be a leader in science.

DR. WILTE: Thank you very much. I have no further questions.

THE PRESIDENT: Do any of defense counsel desire to interrogate this witness further? If not, the Tribunal is about to turn the witness to the Prosecution for cross examination. You may cross examine, Mr. Prosecutor.

MR. MINESKY: Mr. President, in view of the fact that the Prosecution is in full accord with substantially all of the expert testimony of this witness we will not burden the record with any cross examination.

THE PRESIDENT: The witness will therefore be excused from further attendance, and the Marshal will escort him away.

Counsel, it is the understanding between counsel that the defendant Hoerlein will now submit to cross examination?

MR. SPENCER: Yes, sir.

THE PRESIDENT: Then the defendant Huerlein may leave the dock and take his place in the witness box.

MR. WATSON: Perhaps you'd better help the defendant with his documents. No, I think he has them all right.

You may be seated.

HEINRICH HUEBLEIN (Resumed)

CROSS EXAMINATION

BY MR. SCOFFER:

Q If the court please, I think it is only fair to point out that Mr. Minskoff is really charged with bearing the principal weight of the cross examination of the defendant Huerlein, in view of the weight which Dr. Nolte and the defendant himself gave to the type of testimony but I will clear up a few topics first.

THE PRESIDENT: Very well.

Q Dr. Huerlein, we have three exhibits which list and describe the positions you held, namely, Exhibits 295 and 296 in Document Book II and Exhibit 1616 in Document Book 66. These three documents by themselves show that for the twelve years of the Nazi era you were a member of the Central Committee of Farben, a member of the Team and Deputy Chief of Sports II. Is that a fair summarization to begin with?

A Yes.

Q Can you tell us the month you applied for membership in the Nazi Party?

A Yes. Just a moment. Excuse me; I wasn't prepared for this question. Otherwise I would have gotten this material ready.

THE PRESIDENT: Take your time and find your reference.

A On 24 April 1934 I was asked by the National Socialist Party to fill out an application for membership. I took quite some time after thereafter, but I cannot tell you exactly when I filled out this application.

I have here a further letter of 5 June 1934. I know that this application was turned in before the Roehm Putsch on 30 June 1934. At that time the Party had blocked admission. For reasons that I have explained in the meantime, Frick's Community Regulations had replaced Goering's Community Regulations, the Prussian law they wanted me the only choice I had was to enter the Party or to forsake the representation of the City of Duppertal, and the representation of my plant and sciences in general. That's the reason why this application of 1934 was backdated by the Party, because you showed on your chart that I was supposed to have been a member since 1933.

Q Well, your party card you'll agree does show it was back-dated until 1933, does it not?

No. nat. 1932.

Q 1933.

A That might be.

Q All right. That's enough. Now, my original question.

4. I don't know. I really don't know.

Q If only question was, what month you did apply. Now, I will go on to my next question. Do you know the name of the law or the title of the law which the Kreisleiter told you required you to join the Nazi Party? Can you tell us that?

4. I just said that it was the Reich Community Regulations, (Reichsgemeinschaftsverordnungs-gesetz) issued by Minister of the Interior Frick, which replaced the Prussian Community Regulations of Goering.

Q Did you check the law yourself as we did yesterday in order to find out whether or not there was actually such a provision in that law, or did you take the word of the Kreisleiter?

A. I cannot say that any more. This happened years ago. I cannot say whether I accepted this as true or not. Whether I looked it up myself.

Q Now, is it not a fact that even in the Reichstag there were a few members including the defendant Schmitz.

who were neither required by law, who did not join by personal choice, or who were not required to join the Party for one reason or another satisfactory either to the individual or to the Party? Is that not true?

A That may be, but I can't see any connection between this and the crimes that are charged against me.

Q Now, do you know of any other person - by name - who was permitted by the Party to enter the Party during this closed period, that is, between the first of May 1933 and the first of May 1937? Do you know anyone of your friends who was likewise permitted to join during that period?

A I didn't bother with other people's business. I had more important things to do. I had scientific problems to solve, and in this case I had to make my own decision after careful deliberation upon my own responsibility as to what I was to do.

Q Well, Defendant, let me just repeat the question. I was merely asking you if you recall anyone else by name who joined that closed period, and if you don't recall anyone, please just say you don't recall anyone.

A I am not prepared for that question at the moment. If I had been given some time I might perhaps have been able to give you some names.

Q When you talked to the Kreisleiter about joining the Party, did he say that the Party was interested in having a man of your standing join the Party because of the importance to the Party at the time?

A The Kreisleiter told me the following: "I am generally forced to suggest my old fighters as councillors, but I want to have a man in there who is accustomed to seeing economic matters from a higher point of view. We see that you are against Streicher and the other fanatics in the Party, but we have confidence in you, just because of your fighting attitude, and the City of Kuppertal has important economic interests."

You have railroads, the gas-works, the electricity works, and other economic questions, and I want to have at least one man among the council-lers who is accustomed to looking at economic things from a higher point of view. Besides that you have questions, the real-estate questions, etc., and I did not deal with these questions a National Socialist sense, but I thought that these negotiations should be conducted according to the rules of democracy, so that other parties could be heard.

Q Now, before you made your application to join the Party, you mentioned - quite properly that the Roehm Putsch had not taken place. Did that have any special significance in your feelings at the time, that you happened to mention to Roehm Putsch specially?

A Yes.

Q Why was that?

A This of course shocked me, as it did everyone in Germany. The question was whether one should get away from it now or whether one should try to do one's best on the spot where one was.

Q Now, before you joined the Party, just to mention a few highlights, the Nazis had made Germany a one-part State, they had accomplished the forcible assimilation or gleichschaltung of all industrial and professional organizations of Germany, and I am sure you, yourself, were quite amazed by the book-burning in the public square. Is that true? Before you joined the Party?

A Certainly. I have explained my attitude toward the Party program and to the Party attitude quite frankly here. I have explained that I looked at many points of the Party program as Mr. Justice Jackson explained in his big speech here. I also said...

MR. SPEECHER: Just a minute, Defendant. Mr. President, I request that you instruct this defendant to be responsive where he can be responsive. The simple question, was, if he recalled that those events happened before he joined the Party. Not more.

THE PRESIDENT: Let me say to the defendant this; that it will very much help if you, Mr. Defendant, will answer these questions directly and as briefly as possible. And I think I ought to tell you, if you do not already know it, that if the Prosecution develops some fact from you which you think ought to be amplified and he does not permit you to do it, your own counsel, at the conclusion of the cross examination, has the privilege of going again into the same subject matter and affording you a timely opportunity to testify as to relevant facts. If you keep that in mind and as directly and simply as possible answer the Prosecutor's questions and leave it to your own counsel to exercise his judgment as to further interrogation, it will help in the orderly procedure of the trial.

Q Dr. Hoerlein, did you have any friends or acquaintances who, before you joined the Nazi Party, had been arrested by any of the affiliated organizations of the Party, such as the SA at that time particularly, because they were active opposition leaders from the trade, professional, or labor organizations of Germany? Did you have any friends among that group, and if so, please name one.

A I don't recall any one at the moment.

Q Now, after you applied for membership in the Party, there was the Roehm affair the occupation of Austria, the elimination of the Jews and certain order opposition elements from the entire economic and political life of Germany, and the occupation of Czechoslovakia, to mention only a few things that happened before 1 September 1939. You have testified that you had a chance to take a job outside of Germany in 1933 or 1934. Did you ever consider resigning after the Roehm purge and before 1 September 1939 from any job in Germany?

A I explained the reasons that held me in Germany during my direct examination by Dr. Helto.

Q Now, you testified that after the invasion of Russia you did resign from your position as Betriebsfuehrer at Elberfeld as a type of protest; is that correct?

A Yes, that's right. On 30 June 1941 I resigned my position as plant manager because I didn't want to tolerate this any longer.

Q Well, who did you tell that that was a protest. How did anyone know it was a protest?

A Of course I couldn't tell people "I protest against the war in Russia," but the Party did understand what my action meant, as can be seen from the attitude specifically of the leaders of the Labor Front against me.

Q Did anyone in the Party tell you that they understood your resignation to be a protest against the invasion of Russia, or did you just imagine that?

A Mr. Prosecutor, it was been repeatedly stated here that anyone who might have dared to take a stand in a public speech against the Party would have disappeared into a concentration camp immediately. I did not emigrate bravely, as many others did; I stayed in Germany, and in the scope of my activities I acted decently and honestly.

Q Did you select your successor as Betriebsfuehrer?

A Yes, I appointed Director Dr. Lutter as plant manager.

Q And thereafter you were responsible for his conduct as Betrieb-sfuhrer, since you were the Vorstand representative at Elberfeld; is that correct?

A As a member of the Vorstand, of course, I still had to represent the plant towards the Vorstand, but not towards the Party any more.

Q Did you resign from any other responsible positions as a protest to the Party?

A I had none.

Q Now, let's talk for awhile about these publications which made slanderous attacks on I.G. Farben, and let's start off by your knowing that we agree that these were slanderous attacks on I.G. Farben. Now, you testified that you were able to stop certain of these publications. Can you tell us the names of the publications which you were able to stop?

A Those publications are offered as documents in my document books. First of all it is "The People's Health from Blood and Soil" (Volks-gesundheit aus Blut und Boden) which was issued by Streicher or by the Physicians' Leader Dr. Will. Then there is a magazine called the Fountain (Der Brunnen) which was published in Duesseldorf. There were complaints, trials against the magazine "Animals Rights and Protection of Animals" edited by Finus (that's in the document book) (Tierrecht und Tierschutz) some others that I do not remember.

Q You don't claim that any one of these publications was an official publication of the Nazi Party itself, do you?

A The magazine "The People's Health from Blood and Soil" was just as official as the "Stuermor" for which Dr. Streicher was hanged, and it was just the same kind of disgusting scandal sheet.

Q I have no doubt it was very disgusting. Now, with respect to the question of the "Stuermor", since you have raised it. Do you know that Bormann himself issued a circular to the Gauleiters and to the Party, saying that the "Stuermor" was not an official Nazi paper, but a private publication of a man who happened also to be a Nazi leader? Do you know that?

A Ho, Mr. Prosecutor, I did not know that, but I did know that this magazine had a circulation of a half-million in Germany, and that it was publicly exhibited in glass cases to the public by Kreisleiters and Ortsgruppenleiters. Whether this was an official publication or not, it was a Party activity to the public.

Q Isn't it true there were a number of Nazi leaders who were anti-vivisectionists in addition to Streicher?

A I didn't quite understand the question. May I ask that it be repeated? (the question was repeated by the interpreter). Yes, I explained that beginning with Hitler who wrote to an SS Physician Dr. Eckart in Hannover, a few years before the seizure of power "After the seizure of power we are going to do away with all of this nonsense very quickly." After the seizure of power this particular doctor Eckart carried this letter from doctor to doctor. Another opponent was Goering, who issued a decree at Berchtesgaden on 16 August 1936 stating, "from this day on every animal experiment in Germany is forbidden and whoever conducts any more of these experiments will be sent to a concentration camp." Then there was Hess, there was the official leader for all questions of public health, and then a number of other people, Mr. Frick, and a number of other persons.

Q That's right. Now, you succeeded in winning this battle, even though there were some very important Nazi leaders who were really against this whole thing, is that correct?

A That is correct, Mr. Prosecutor. And when I began my fight I was quite aware of the possible consequences, but if I saw my life's work threatened, then the consequences, were quite insignificant for me, whether I was sent to a concentration camp or not, and back of me, there was always the position which the Bayer Company of New York and Albany had offered to me, the leading position as a scientist in a large American enterprise. I would like to emphasize this because I consider it my duty towards my comrades in the dock: I was in a more fortunate position. On the one hand, I was directly attacked, and I considered it a courageous duty to stand up for my ideas. On the other hand, it is true I had a last resort, the position I was offered, which others did not have.

Q Now, the exhibits in evidence show that from Leverkusen and Elberfeld the Vorstand members Mann, Kuehne, and yourself joined the Party in the years 1931, 1933, and 1934, respectively. At the time — that is, in 1933 and 1934 — did these other two Vorstand members talk to you about the fact that the donations of the plants to the Nazi Party, as you have testified, amounted to blackmail of the Party?

A I had more important things to talk about to my colleagues than these questions. I myself paid monthly dues of 10 marks. You certainly won't consider that a magnanimous contribution to the NSDAP.

Q I was talking about contributions of Farben to the Party in very much larger amounts than 10 marks. But let me ask you this: When did you first hear that Farben had given 400,000 marks in connection with the election in March 1933?

A As I recall, I heard that in 1945.

Q Now, you testified that there were 5,000,000 Reich Marks — from this compilation we have with respect to contributions to the Party or to related organizations to the Party — 5,000,000 Reich Marks which were given to the Association of German Industry. I don't understand

what you mean by Association of German Industry. Did you mean the Reichsgruppe or the Wirtschaftsgruppen?

A What 500,000 marks — 5,000,000 marks are you speaking of? Please. I didn't understand.

Q You testified concerning this exhibit that showed Farben contributions, and you mentioned during your direct examination by Dr. Nalta that 5,000,000 Reichsmarks were given to the Association of German Industry; is that right?

A A promotion association for the German industry was founded. It was the great worry of all persons that the Ministry of Education would conduct a policy of personnel in our universities which was directed against sciences.

Q Just a minute. I just wanted to know the name of the Association.

A It was not an association. It was called Foerderergemeinschaft der deutschen Industrie (Community for Promotion of German Industry).

Q All right, Doctor, now I have the name. That was my first question. My second question is this: To what group or organization did this promoting society belong? Under whose jurisdiction was it?

A This promoting society was an affair quite apart. It was a voluntary organization of leading persons who had recognized that something would have to be done in the field of young recruits to oppose the endeavors of the Party.

Q Well, was it under the Economic Groups?

A It was under no Economic Group; it was a completely independent organization.

Q And who was the head of it?

A Dr. Hermann von Siemens.

Q Now, you also testified that even though you were on the Central Committee that you didn't know about a number of gifts to Goering and so on or the 100,000 Reichsmark contributions to the SS. Let me ask you this: Under the so-called principle of decentralized centralization, as it has been described here, in I. G. Farben, was it customary to allow

the chairman of the Vorstand or other Vorstand members to dispense funds amounting to as much as 100,000 Reichmarks or more as so-called bribes without accounting for them in any way, so that they were called to the actual attention of the responsible management or direction of Farben?

A The amounts were paid by Geheimrat Schnitz. As far as I remember, Counsel Dr. Dix has shown that the first payment was made for a collection for the widows and orphans of SS men who had been killed.

Q Just a minute. I didn't ask you for an explanation of what it was about, Doctor. I merely asked you if it was customary for Vorstand members to do those things without reporting on them to the rest of the Vorstand. Do you understand the question?

A It was of course not customary, but Geheimrat Schnitz was the Chairman of the Vorstand, and I have stated that I could imagine that he was under special pressure as the financial expert of Farben, and therefore I would not say that it was completely outside of his competency. No other of my colleagues or I myself would have acted in this way, because I would not have taken such authority upon myself.

Q Now, you testified that the local plant leaders had a certain authority to dispense funds or contributions to the Party which later on the Central Committee merely approved by taking notice of them informally.

A What did you say?

THE PRESIDENT: There is no question, Counsel.

MR. SPEECHER: No, I was —

WITNESS HEINRICH HOERLAIN: No, you have not asked any question.

MR. SPEECHER: That's right.

WITNESS HEINRICH HOERLAIN: No question.

Q Now, was it the policy of the principal direction of Farben to permit each Vorstand member to make whatever concessions or contributions he thought were necessary to the Nazis, to the Reich authorities, in order to preserve the immediate interests of Farben?

A Yes.

Q Now, —

A It was of course necessary, when all these members of the Vorstand were distributed over Germany, to allow every individual a certain amount of liberal right to make his own decisions.

Q And was he allowed to make these decisions, then; even though he was not aware of how deeply other Farben management representatives had committed Farben to the desires of the Party?

A I testified that pressure upon the various plants in Germany in various places varied in intensity, and that therefore the sums which these particular persons paid as so-called protection money or insurance premiums for peace and order were different amounts. I don't know what these sums were. You can find them in the card index, but I don't know these card indexes.

Q Now, when you were in the Ten, or when you were acting as deputy chief of Sparte II, and you discussed the appropriations for various financial undertakings, at that time did you question whether or not some of these large expenditures were also concessions which were being made in one way or another to the desires of the Reich authorities or didn't you question it at the time at all?

A In the Ten such questions were not discussed. As the so-called Deputy Chairman of Sparte II, I deputized for Dr. ter Meer in his absence once or twice and during that meeting, just as in any other Sparte meeting, for credit for new plants were discussed, but no contributions to the Party.

Q No, I wasn't talking about contributions to the Party. I was talking about appropriations.

A No. Appropriations or contributions -- that is about the same thing.

Q I am talking about credit appropriations, in the Ten or the Sparten-Ten of Sparte II.

A Appropriations of credit to the Party, I believe, did not exist at all. When I say appropriations of credit, I mean money necessary

for the erection of new plants, not contributions to the Party.

Q We are in precise agreement. That is what I am talking about, too. Now, let me ask you the question again: as these credits for plant expenses were coming up, did it occur to you at the time that some of these credits were concessions to the Reich or to the Nazis, or did it not?

A During my direct examination I have already stated that things that happened eight or ten years ago can be positively testified to only with the aid of concrete aide-memoirs. If you would be kind enough to give me the records of these meetings at which I presided, then I should be very glad to give an accounting about every single sum.

Q Please don't restrict your answer to those meetings when you were acting as chairman. I am only asking you about all these various appropriations that came to your attention. Tell us about those. At that time did you have any feeling that those appropriations in many cases were concessions to the Nazis and to the Third Reich, or didn't you?

A Mr. Prosecutor, during my direct examination I explained as clearly as possible that I had no reason to object to any granting of credit for a peaceful purpose, even if the plant to be constructed had a certain significance in case of war, which I considered impossible -- the same significance as, for instance, food production in Germany.

Q Would it be fair to say, Dr. Hoerlein, that, so far as you could observe the situation, Farben made such concessions to the Third Reich as were necessary, not merely so that Farben could survive, but so that Farben could flourish under the Third Reich? Is that a fair statement, from your own observation?

A I never considered any construction as a concession to the Third Reich. Everything we did I considered a logical development and the normal business activities of a large enterprise.

Q Now, in connection with the mobilization plan, you personally received the principal correspondence from the Vermittlungsstelle-W,

did you not? That is, for the Elberfeld plant?

A Yes, that is correct. Yes. May I explain why I myself did that?

Q Go ahead.

A Or is it enough?

Q. It is enough for me, but if you feel it is necessary —

Now, you also received the common circular directives which went to all the Parbon plants with respect to the mobilization questions, did you not? That is, the general circulars which Vermittlungsstelle-W sent out?

A. They went to all plants, and I would have seen them, even if I had not been the Abwehrbeauftragter.

Q. Now, as early as 1937, is it not a fact that certain plans for Hoechst, as well as Elberfeld and Leverkusen, with respect to the mobilization plans had to be delayed because you personally had not been able to investigate sufficiently the ability of Hoechst, Leverkusen, and Elberfeld to produce certain products in case of war? Is that not true? As early as September 1937?

A. In 1937 the question of a so-called Belegungsplan for the pharmaceutical departments in Hoechst and Elberfeld was also discussed. The basic idea was that the pharmaceutical departments were to continue their peacetime production — a matter of course for public health. We also discussed that in the event of war we might be required to meet higher demands. I point out to you, however, that in Document Book I, on page 10 or 11 of the German, there is a table which proves what was delivered to the Wehrmacht at the time, and this particular document — in the English Document Book it's not to be found. In Book I those two pages, 10 and 11, were not included. I should like to ask of the Tribunal that those two pages be requested, since numbers are just the same in German and in English; there is no difference. You can see from that that until 1936 we did not ship a penny's worth of pharmaceutical material to the Wehrmacht and in 1937, 400,000 marks.

Q. Doctor, just a minute. Your Counsel is, of course, free to offer those documents, as you must know. Now, my question was: Do you remember that as early as September 1937 mobilization planning with respect to those three plants was delayed because you personally had not checked the ability of each of those three plants as a group to commit themselves for the

case of war? Do you remember that or don't you?

A. At the time I told Dr. Lutter, who worked on this question, that he should answer when he was asked about mobilization plans, that we wanted to continue our peacetime production. I also proved by my objection to Reich Minister Schacht what I thought about these so-called Bolognys-plans (mobilization plans). I have introduced a number of letters in which I protested against the so-called mobilization plans, which I, by the way, considered less destined for war than preparation for planned economy.

Q. Now, Doctor, I hadn't asked you for a general exposition about your ideas on the mobilization question. I only asked you whether or not you recalled that as early as September 1937 certain mobilization plans were held up because you had to do some personal work yourself. If you don't remember, just say you don't remember. If you do remember it please give us the benefit —

A. Yes, I just explained to you how this whole thing came about.

Q. Thank you. Were you one of the specialists appointed by the GB Chem. the defendant Krauch, to act as a specialist advisor for him in the pharmaceutical field with respect to products which were needed during the war?

A. No. Pharmacy didn't belong to the duties of the Plenipotentiary for Chemistry.

Q. You don't know —

A. I emphasized that Elberfeld plant — and the same is true of the Pharmaceutical Department in Hoechst — had nothing to do with the Four-Year Plan.

Q. You don't recall any appointment by the GB Chem. as a special advisor in the field of pharmaceuticals?

A. Special consultants for pharmaceutical products did not exist. During a later stage during the war, there were inquiries and general discussions about pharmaceutical problems. It may be

Q. Well, were you his regional representative? Were you Dr. Krauch's regional representative in that connection, or weren't you?

A. Regional representative?

Q. Regionalbeauftragter.

A. For Dr. Yruech? No, the regional representative for Elberfeld was Dr. Stornberg in Dusseldorf.

Q. Exhibit 475, which is in Document Book 22, mentions that both you and Dr. Schringer had been appointed as technical experts by the Plenipotentiary General for Special Questions of Chemical Production.

THE PRESIDENT: What is the exhibit? Is it an affidavit or a document?

MR. SPEAKER: It is a document put out by Vermittlungsstelle-W itself and sent to Farben generally. It is Exhibit 475, HL-5936.

A. May I say something about that? May I make a statement about this? May I?

I never had any conference with Dr. Schringer. It may be that the Reich Office for Economic Development drew up a list in which my name was included without my previous knowledge.

Q. Now, Doctor, you testified a day or two ago in some detail with respect to what countries did and did not appear to be parties to certain conventions concerning gas warfare. Were you more interested in those conventions than you were in the Hague Convention and the Geneva Convention, concerning which you said you had not read the actual provisions of those conventions with respect to the treatment of prisoners of war and the persons in the occupied countries?

A. I said that I knew that there were certain international conventions but that I did not know their text in detail.

Q. Well, were you more interested in the provisions of international conventions with respect to gas warfare than you were in the provisions of international law with respect to prisoners of war and foreign laborers, of which Farben employed thousands upon thousands?

A. I stated that I assumed as a matter of course that all my colleagues would treat every foreign worker in the same way in which they treated the German workers, with dignity, decently, and would give them whatever food they could under the circumstances.

Q. Doctor would you recall what you testified --

THE PRESIDENT: It is time for the recess. The Tribunal will rise.

(A recess was taken.)

THE WARDEN: The Tribunal is again in session

CROSS EXAMINATION (Cont'd.)

BY MR. SPRECHER:

Q. Dr. Heerlein, did you assume, as a matter of course, that the rules of the Hague and Geneva Conventions were being followed in Germany generally with respect to foreign labor, or did you merely direct your testimony to their employment by I. G. Farben?

A. I assumed that the provisions in effect were always adhered to and interpreted in the proper way.

Q. For all Germany?

A. Yes.

Q. Did you think that was the case after March 1942, when Sauckel became G.B.A. (General Plenipotentiary for Labor) and began some of his recruiting actions?

A. I was not particularly interested in labor questions and that wasn't my duty. You must not assume that I took a deep interest in those things because my task was really of a scientific nature. What I had to do was to deal with the production of pharmaceutical drugs in sufficient quantities for home and front.

Q. Well, did you shut your mind to the people that represented those figures on the T-4 charts -- so many concentration camp workers, so many prisoners of war, so many foreign laborers?

A. No, I did not shut my mind, and I think it became quite apparent from my testimony that my life work consisted of helping others. I was never a member of the employers' counsel of the I. G. Farben. I was not a member of the plant leaders conference. I was not a member of the Soko. In the final analysis every human being has a limited capacity, and the day has only twenty-four hours.

Q. Doctor, I forgot to mention one matter to you about an earlier subject. Going back to the year 1934, about the time when the Kreisleiter spoke to you. In fact March 1934. At that time, did you

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go to the highest headquarters of the Party in Munich in order to discuss with the leadership of the Party a new drug law?

A. What leadership of the Party are you talking about?

Q. The Reichsleitung, the Reich Leadership of the Party.

A. I don't know when, but I did get into contact with the Reichsaerzstefuhrer Gerhard Wagner, to warn him of the one-sided measures taken by his superior Hess. At that time I published an essay in the publication "Deutscher Volkswirt", in which I wrote that in the case of the Party efforts in the pharmaceutical field we were concerned with fashion trends, and some of my colleagues expected me to be sent to a concentration camp any day.

Q. Now, I will show you Document HI-8423, which will become Prosecution Exhibit 1860. Will you please take a look at the original copy?

This document is an excerpt from the minutes of the board of directors meeting of the sales organization Bayers, at Leverkusen, on 14 March 1934. You will note that Item 162, over on page 6 of the original which is the only part that is reproduced in the English and the German, Mr. President -- you will notice there, Defendant, that there is mention made of an invitation by the Central Headquarters of the Party in Munich, and that you and Lindner were to go. Does that refresh your recollection about the incident?

A. Mr. Prosecutor, that is exactly what I was telling you. I said that I contacted Gerhard Wagner, who was the Reichsaerzstefuhrer and who represented the Reichsleitung of the NSDAP in this field and that I warned him of extreme measures taken by Hess. That is exactly what I told you.

Q. Now, we will come to a new topic --

THE PRESIDENT: Mr. Prosecutor, just for the record, are you offering as a part of your cross-examination this Document 1860?

MR. SPEECHER: Yes, Mr. President.

THE PRESIDENT: Then it is in evidence, and we will add it to our document book.

BY MR. SPEECHER:

Q. Now, Dr. Hoerlein, in what years--and just please give the years --

in what years were you in the United States after the year 1933?

A. I was in the U.S. four times altogether; twice before 1933. I mentioned the one conference which I had on the occasion of my second American trip with Dr. Weiss, where I was made an offer in the case of revolution, and then...

Q. Dr. Boerlein, just a second. Please, just the years in which you went to the United States after the year 1933. Was it the year 1934, 1935, or what—just the years, please.

A. I believe it was in the years 1936 and 1937.

Q. Now, in what years were you in England after 1933?

A. Repeatedly; I was invited to England in 1935, to hold a lecture in London before the Royal Society. That is considered the highest scientific forum in Europe.

Q. Sorry, Doctor, I only wanted the years. You say "repeatedly". Were there any other years beside 1935? Just the years now. If there is anything else that is important, you can bring that out with your defense counsel; I am only asking you about the years.

A. Mr. Prosecutor, it is very difficult to recall a date from memory if one doesn't recall a certain event which took place at the time. As I told you before, I have no records at my disposal and I have to reconstruct everything from material events which took place. I remember the year 1937 because at the time I was invited by the Society for the Advancement of Science in Nottingham in order to hold a lecture; otherwise I couldn't give you that date either.

Q. Well, if you will do your thinking silently and just give us the date or the dates. Were you there several times after the year 1935?

A. Maybe; I don't know.

Q. What about France? How many times were you in France after the year 1933 and before 1939, approximately?

A. I was there repeatedly.

Q. How many times were you there after the Germans overran France in June, 1940?

A. I went there on various occasions for scientific conferences with the firm Rhone Poulenc in Paris, after Contract 2 had been concluded. Furthermore, at the beginning of 1944 I was in Paris when the question of the transfer of the German pharmaceutical industry to France by government order was under discussion. Thanks to my intervention, this was prevented.

Q. Now, let us come to Rhone Poulenc. Is it not true that you were acting as the chairman of the Pharma Main Conference in October, 1940, when the defendant Mann reported on the plan to obtain a 51 per cent financial control of a pharmaceutical sales company in France which was to distribute and to sell pharmaceuticals, including I.G. products, in France and in the French colonies? Is that true?

A. I was the chairman of the Pharmaceutical Main Conference since 1931.

Q. Doctor, do you remember that you were chairman on this occasion when Dr. Mann reported on the 51 per cent financial control by Farben? That is the question.

A. Dr. Mann reported on orders which had been given to him by the Government. I don't remember the details. I have stated that the basis thought of the conference -- that is the impression I gained at the time, which remained in my memory up to now -- was a private economic understanding between the two firms. I cannot remember any details. I know only that whenever two businessmen get together it is always the case that one makes a high demand, the other one offers very little, and at the end both compromise on something which is satisfactory to both parties.

I am not a businessman.

Q. With respect to your comment concerning private commercial tactics as you understand them, did you think that this was true with Rhone Poulenc when Dr. Mann told Rhone Poulenc that if they did not come to Farben's main terms the Nazi government would take over where Farben left off? Did you think that was normal negotiations?

A. I understood the situation this way: Mr. Mann made a proposal which was not acceptable to the firm Rhone Poulenc and which was rejected by them. I further understand Mr. Mann had to find some sort of line to which to withdraw, and I think that this remark was merely a figure of speech.

Q. Didn't you think at the time that it had any influence at all upon what the French were willing to do in their negotiations with Farben?

A. Would you please repeat the question? I didn't understand it.

Q. Didn't you think that this statement of Dr. Mann's to the French about who would follow in his footsteps, namely the Nazi government, influenced the French very directly in their negotiations with I.G. Farben?

A. I don't believe so. I know these gentlemen personally as a result of my own negotiations with them, and I know that they are good businessmen. I also know that most of their facilities were in unoccupied France and that they therefore could consider themselves free agents in the negotiations. Both parties were free and both tried to arrive at some understanding.

Q. If the objective was to deal with a free partner, why did I.G. Farben want 51 per cent control of a French enterprise?

A. I don't know whether they wanted 51 per cent control of the enterprise. I don't know anything about the details of these negotiations. These were negotiations in which I did not participate, and I therefore cannot make any statement about them. I can only make a statement about the basic attitude, and that is what I just did.

Q. Well, did you receive an internal Farben memorandum concerning Dr. Mann's negotiations, in which Farben outlined the tactics which had been employed with the French? Did you receive that or didn't you?

A. On 13 December 1940, I received a letter which was sent to me by Mr. Schmitz on behalf of Mr. Mann. This was the material on the license agreement which was to be concluded with Rhone Poulenc and Spozia; first the German text of the license agreement and two attachments.

Q. Yes. Suppose we show you a copy of that, if you don't have one already. And that will become Prosecution Exhibit 1861. That is FI-7630.

Now, Mr. President, we have only translated the cover sheet, since part of the attachments are already in evidence as other exhibits. But the witness has before him the original letter and all the attachments there.

Now, is that the letter from Dr. Werner Schmitz which you mentioned, Prof. Eschlein?

A. That is exactly the letter I just mentioned; Just the same.

Q. Thank you. Now, does that refresh your recollection that the 51 per cent demand by Farben which was rejected by the French then led to Dr. Mann's statement that that the Nazi government would have to come in if the French didn't change their ways?

A. With respect to this letter of 13 December, I received, as I just mentioned, a few attachments; included was a record of the conference of 29 and 30 November and 2 December 1940. There I read this remark.

Q. Mr. President --

A. I have already stated too how this remark affected me. I considered it to be merely some sort of a line of withdrawal taken by Mr. Mann because Rhone Poulenc did not consider his proposal suitable and made a counter proposal.

MR. SPEECHER: Mr. President, and Honorable members of the Tribunal, the attachments to which the witness has just referred is Exhibit 1269, which is found in Document Book 59, on English page 55.

Q. (By Mr. Speecher): Now, you testified that you did not recall any discussions to the effect that Farben had any claims or damages outstanding from Rhone Poulenc because of the official French view on the law of patents. You further testified that your objective in dealing with the French on this patent question was merely one of securing a clarification of the French law rather than a revision.

Did the French government officially ever change its view with respect to the patent law, so far as you know?

A. Yes, it did. The Vichy government cleared up that question. It is very interesting that this revised French patent law is still in existence today, as perhaps the only, or at any rate one of the very few, laws of the Vichy government to be preserved. This proves that this law is in accordance with and common sense.

Q. Now, you were also present when the defendant Mann reported to various I.G. agencies that under the proposed contract Rhone Poulenc was to be required for a 50-year period to pay royalties on pharmaceuticals and chemicals which were allegedly imitations of Farben products, is that right?

A. In the course of fully free agreements between the firm Rhone Poulenc and myself, an understanding had been reached between the two where that the firm of Rhone Poulenc - not for the life of the patent but for 30 years - was to pay ten per cent of the turn-over of all malaria preparations to Farben because they acknowledged Farben's moral rights.

Q. I recall your testimony about that single point yesterday. I was asking you about whether or not you were present on several occasions before several Farben agencies when Mann reported on this 50 year agreement with the requirements I just stated--or weren't you there? Don't you remember?

A. Mr. Mann, from the start, considered this one contract merely part of a unit including three contracts. It is impossible to pick out this one matter and to consider it as something separate and leave out of consideration the other two contracts, which were of great importance and very favorable to the firm Rhone Poulenc.

Q. Now, Doctor, you learned in several of the meetings of the I.G. Farben agencies that one of the normal tactics to be employed in dealing with firms in the occupied countries was to protract negotiations with the threat that if Farben's terms were not accepted the Nazi government would come in; that was brought to your attention on several occasions, was it not? Not only about Rhone Poulenc, several other occasions.

A. I don't know at the moment. I said yesterday - but, Mr. Sprecher,

if you have any concrete material, will you please hand it over, because I can only remember these things if I have something concrete before me.

Q. Yes, Doctor, I will give you an example: Exhibit 1270, Document Book 59, English page 59, just at the bottom. That is talking about Belgian firms, where it says "consequently it was proposed to protract the negotiations." Do you see that? You were present there, were you not?

A. No. It says here, "With reference to Heros, Mr. Mann informs us that although we are concerned with an agreement with Heros" - that is Brussels - "on a 50-50 basis" - that is very important - "the execution with respect to sales methods seems to be very difficult, and that therefore, this matter would have to be treated in a dilatory manner." This "dilatory" manner in the German concept meant that one was not much interested in the entire matter and perhaps it would be good to translate this as "Wait and see". In other words, it was considered a relatively unimportant matter.

Q. During the discussions with the French concerning Rhone Poulenc did you feel that the defendant Mann was holding back from any of the Farben people the plain and simple facts of the strategy which was being employed in France? Did you have the feeling he was holding anything back from you?

A. No. I said yesterday that every member of the Vorstand of Farben naturally had his own field of work, he worked in this field on his own responsibility, and repeatedly during Vorstand meetings business transactions which were already concluded were reported. I don't think that Mr. Mann wanted to hold anything back intentionally, but it is quite another matter whether, during a short session, every detail of a matter is reported or whether only the most important points are mentioned. It is quite a different matter whether all the other gentlemen who, after all are not so much interested in this negotiation, receive the full impression of all the motives details and which played any part in the matter.

Q. Now, just one or two last questions. After you received the minutes which are now before you, concerning these negotiations in November

and December, and after you had read them, did you still have complete confidence in how other representatives of Farben were taking initiative and leadership in connection with acquiring plants in the occupied territories?

A. The firm Rhone Poulenc, which came into being as a result of the merger of the firms Poulenc Freres and Etablissement Rhone in 1926, is an enterprise which grew to a value of about \$ 100,000,000 as a result of the imitation of German pharmaceutical discoveries.

Q. Just a minute. My simple question, Doctor, was whether you still had confidence in the propriety of what your Vorstand colleagues were doing after you read those minutes.

A My confidence was not shaken in any way as a result of Mr. Mann's negotiations, because I knew that Mr. Mann, from the very start, wanted to offer cooperation to the firm of Rhone-Poulenc in the new field. We, after all, had much more to offer the firm of Rhone-Poulenc than they could offer us.

I saw in this a very fair balance, and why should I show a lack of confidence in other colleagues as the result of Dr. Mann's negotiations? After all, I did not consider Dr. Mann's actions in any way immoral.

Q Will you recall, for a moment, the New Order with respect to pharmaceuticals, particularly with respect to France, and now may I ask you this? Did the Rhone-Poulenc arrangement, as it was finally concluded, meet the requirements of the New Order which had been submitted to the Reich Ministry of Economics, or did it not?

A The New Order of the Reich Ministry of Economics, the so-called New Plan, I saw in Nurnberg for the first time. I shall confess to you honestly that in view of the extensive amount of material here, I have not even read it. I had so much to do with other more urgent matters that I really did not find time to deal with this material.

MR. SPRECHER: Mr. Minskoff will continue.

BY MR. MINSKOFF:

Q Mr. Heerlein, after the death of the father of the defendant Mann, you were the Senior Vorstand member in the Pharmaceutical section of I.G. Farben?

A I stated yesterday that I was the senior member of the Vorstand and that at that time I was the only regular member of the Vorstand.

A May I interrupt. I just asked, were you or were you not, as of that time, the Senior Vorstand member?

A Yes.

Q Thank you. Now, the period during which you were the Senior member of I.G. Farben Pharmaceutical Section, was between 1932 and 1945; is that right?

A When I became the senior member of the Vorstand I remained that.
It is hardly possible that anyone outgrew me in age after that.

C The question did not relate to the age or senior position, the
answer was either yes or no. Which was the answer, please. Were you or
were you not?

DR. NELTZ:

I beg your pardon. May I state for the record that the defendant did
not say that his personal age could be outgrown, but that his seniority
in the firm remained as it was in 1932 throughout the entire time he was
in the Vorstand.

THE PRESIDENT: I think that will speak for itself.

BY MR. MINSKOFF:

Now during that same period, '32 to '45, because of your seniority,
you held the position of Chairman of the Pharmaceutical Main Conference
of I.G. Farben?

A Yes.

Q That was the mixed conference, was it not, of the commercial and
scientific leaders of Farben in the Pharmaceutical field?

A I have already explained yesterday...

Q May I interrupt? I asked: That was the mixed conference, was it not,
of the commercial and scientific leaders of Farben in the Pharmaceutical
field?

A Mr. Prosecutor, I cannot answer this question with a simple Yes
or a simple No. If you do not permit me to answer this question properly
I shall not answer it at all.

Q In any question that is put to you that you cannot answer with
Yes or No, please so state.

A In this case I cannot do so.

THE PRESIDENT: Does Counsel wish an answer?

MR. MINSKOFF: Yes.

THE PRESIDENT: Then you may answer it in your own way, but please

make it as brief and direct as possible.

A I stated yesterday that the Pharmaceutical Conference was a meeting comprising a delegation of the Pharmaceutical Department. It was a meeting of the directors who were responsible for science, production, advertising, and sales.

Q Thank you. There was also, was there not, a Scientific Central Conference, at which just the scientific leaders of Farben in the Pharmaceutical field were present; isn't that right? Can you answer that question with Yes or No?

A No, I cannot.

Q Will you answer it your own way?

A There was a Scientific Central Conference, where scientific and technical questions were dealt with predominantly, but where also gentlemen of the Sales Division were present, Mr. Mann and Mr. Mortens mainly. There was no Chinese wall within this Pharmaceutical Department.

Q You were Chairman also of that Conference; is that right?

A Yes.

Q You were also a member, were you not, of the Steering Committee of I.G. Farben, the so-called Zentral-ausschuss?

A Yes.

Q This is the Committee, if I understand it correctly, that is loosely referred to as the Big Seven of I.G. Farben.

A This committee was properly defined in the Basic Information as—

Q May I interrupt? Do you think you could answer that question with Yes or No, Mr. Witness?

A This is a very wrong and erroneous definition which you gave of this committee. I could only answer by giving you a whole sentence as a reply, not just one word.

Q "No" would have covered that. Who were the other members of this committee?

A Schmitz, Krauch - while he was not active in the Four-Year Plan or

the Office for Raw Materials - Schnitzler, Gajewski, Knieriem, ter Meer, and Schneider.

Q Other than yourself then, Dr. Hoerlein, and von Knieriem, who was chief in the legal field, all the others were either chiefs of one of the three Sparte or else chief of a Sales Combine; isn't that right?

A No. Ter Meer was not the chief of a Sales Combine. He was head of a Sparte.

Q That was what I said, - either the Chief of a Sparte or Chief of a Sales Combine?

A Yes.

Q Now, neither defendant Mann nor defendant Lautenschlaeger were at any time members of that committee; isn't that right?

A In my affidavit I clearly stated—

Q Mr. witness, are you capable of answering that question with a Yes or No?

A I should like to ask the Tribunal for permission to explain the motives for my becoming a member of the Central Committee.

Q May I interrupt once more? The only question before you is, can you answer that with a Yes or No?

THE PRESIDENT: Now we are getting away from the question. Please repeat the question; Dr. Nelte is on his feet; perhaps he wants to object. Will you just state the question again for the record?

BY MR. MINSKOFF:

Q Is it true, Dr. Hoerlein, that neither the defendant Mann nor the defendant Lautenschlaeger were at any time members of this committee?

MR. NELTE: I have an objection. Mr. President, you rightly emphasized that the time of the Tribunal cannot be burdened with unnecessary questions. If during my examination of Professor Hoerlein, this question, which after all was stated by the Prosecution in their documents, was not contested, I ask you what the relevancy of this question is.

THE PRESIDENT: What is the importance of it, Counsel?

MR. MINSKOFF: Two things, Your Honor. One, establishing the entire picture into which this defendant fits; the importance and the significance and the preeminence of his position in Farben and in the Pharmaceutical field. Now, it is true that with respect to some of the questions, the documents that are taken at this time, parts of the interrogation could determine some of the answers. On the other hand, the defendant has been taken through much, much material that has been in documents, asking for his views and his explanations.

I think the Prosecution can clarify the exact position of the defendant, his importance, significance, authority, and responsibility, and if we can get responsive answers we can do it rather quickly.

THE PRESIDENT: It is not very significant one way or the other. I see no harm in the witness telling whether the two defendants asked about were or were not members of the committee.

The objection is overruled, and the witness may answer, if he can. If he knows, he may say to the Tribunal whether Mann and Lautenschlager were members of this committee.

THE WITNESS: As the representative of the scientific representation of Farben I became a member of the Central Committee. Since Mann and Lautenschlager had nothing to do with that, they did not become members. That has nothing at all to do with the Pharmaceutical Department.

THE PRESIDENT: That is an answer.

Perhaps this is a good time to suspend for the noon recess. The Tribunal will rise until one-thirty. (Tribunal in recess until 1330 hours)

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AFTERNOON SESSION

The hearing reconvened at 1:30 hours.

THE CLERK: The Tribunal is again in session.

CROSS EXAMINATION (continued)

PROFESSOR HOERLEIN

BY MR. DINSKOFF:

Q. Dr. Hoerlein, on the direct examination you referred to the cross-examination of Dr. Struss, and you stated that you agreed with his description of your position in the Pharmaceutical Field of Nurnberg, when he said that you were Primus Inter Pares. That is right, is it not?

A. Yes, that is right. I was Primus Inter Pares.

Q. Do you also agree, Dr. Hoerlein with the description which Dr. Struss gave your position in the same cross examination on page 1888 of the transcript, when Dr. Aita asked him, "Do you and will you maintain that Professor Hoerlein from a organizational point of view, is the Central Technical direction of the Pharmaceutical Field" and his answer was, "Yes, I want to maintain that".

Do you agree also, Dr. Hoerlein, with that formulation of your position?

A. No, Dr. Struss is mistaken here, and I shall give Dr. Ten Hoer ask about this during his cross-examination.

Q. Dr. Hoerlein, before proceeding with the further discussion of your responsibility in connection with the various Nurnberg pharmaceutical plants, I would like to clarify, if I may, your testimony with respect to the Behring Werke Nurnberg Plant.

During your direct examination you stated that the prosecution apparently confused the Behring Werke Nurnberg Plant, which is a separate company, with the I.G. Farben Behring subsidiary. Now please lest there be further confusion, let us place on the record, the precise connection between Behring Werke Nurnberg and I.G. Farben. Now it is true, Dr. Hoerlein, is it not, that in 1929, at the meeting of the Pharmaceutical Main Conference, at which you defended Lautenschlager and

defendant Mann were present, it was decided that Mann should and actually did, take over the Schring works?

A. May I ask that I be shown the record?

Q. Do you recall such Conference?

A. I cannot remember details from the year 1929. I therefore ask you to give me the document.

Q. Do you recall that there ever was a conference at which the problem of taking over the Schring works was discussed?

DR. MELTZ: Mr. President, has the defendant the right, if he is asked something from a certain document, to look at that particular record?

THE PRESIDENT: It is hardly within the scope of the responsibility of the witness to demand documents, but you, as counsel for the defendant, have certain rights in the presentation of your case, to inspect that documents which you request and which are in the hands of the Prosecution, and which are pertinent, will be delivered to you.

DR. MELTZ: Mr. President, I believe if the defendant is to answer a question, he must know what the factual documents are. The Prosecutor has the choice either of withdrawing his question or to read from the the record, and at the same time to ask if this particular record to me if he insists on asking the question.

THE PRESIDENT: All you are substantially correct, at least this far, that if the witness feels that he cannot answer it without documents he can so state, and that answers the problem, so far as the present question is concerned. Then it is up to you or to the Prosecutor, as to whether you pursue it further, and ask the documents or not.

May I ask you, Mr. Witness, in the interests of time, can you answer the question that was propounded to you now?

THE WITNESS: Mr. President, I can give you my recollection generally.

THE PRESIDENT: No, Mr. witness, as the Tribunal understands the situation the question now is whether or not you do recall such a conference. That is all that you are asked now.

THE WITNESS: Since 1926, there were main conferences, and therefore in 1929 there must have been one. In view of the significance of this particular matter, the Schering Works matter was probably discussed during a main conference.

THE PRESIDENT: That is a substantial answer to the question.

BY R. LINSKOFF:

Q. Now, Dr. Heerlein, I have here document MI 14111, which I ask to be marked for identification as Prosecution Identification 1862. I ask you to look at that document and to tell me --

THE PRESIDENT: Just wait a minute; just hold it there a minute.

DR. WELTE: Mr. President, I have not received a copy of this document. They refuse to give me one.

MR. SPEISER: Mr. President, we have given copies before the end of the cross-examination to counsel in all cases. When the witness is done with the document and before re-direct examination Dr. Welte has his right to see the copy. I do not think he has a right to see the copy before it is given to the witness unless we choose to give it to him.

DR. WELTE: I do not ask that I be shown this before the witness gets it, but simultaneously with the witness. Up to this time it has always been customary in these proceedings that as the defense counsel, one has a copy submitted simultaneously when it is submitted to the witness.

THE PRESIDENT: Does the Prosecution have another copy of this document available?

MR. LINSKOFF: The Prosecution does not have another copy of it please the Court.

DR. WELTE: Then I make the motion that this question be withdrawn until I have received a copy.

THE PRESIDENT: In the interest of time, Mr. Prosecutor, pass the document to Dr. Melte, and go on with your examination, and then come back to this question. Can you do that, and then it may be passed to the witness, unless there is some objection. That will solve the whole problem. Ordinarily we assume that if you had the document, -- extra copies of the document, -- you would give that to Dr. Melte, but we are not going to waste too much time here because of that document.

MR. LINSKOFF: It is a very short document, if it please the Court, and it is part of a series of questions we would like the witness to answer.

THE PRESIDENT: Then do you have an objection to Dr. Melte seeing it?

MR. LINSKOFF: Not at all.

THE PRESIDENT: Let Dr. Melte see the document and perhaps we can, after a moment, get along.

DR. MELTE: I have no objection.

THE PRESIDENT: Will you pass the document to the witness?

MR. SPEECHER: Mr. President, we only seek enlightenment here because this is one of the first times this has occurred.

THE PRESIDENT: We are not establishing any precedent. We are just handling a situation here. We have observed that ordinarily you do pass documents to each other at the time you pass them to the witness and we heartily approve of that process. If it becomes impractical or impossible to do so, we will deal with the situations as they arise.

MR. SPEECHER: I only want to be clear on the Court's point of view. Dr. Melte seems to assume he had the right or not the right to object to whether or not the witness saw a document served only for identification, to refresh his memory, or not.

THE PRESIDENT: We were not dealing with the question of the right of the witness to see the document. Dr. Melte said, as we understand

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that as a matter of courtesy he be shown a copy. You answered you had
no copy. He requested you to let him see the copy. He has seen it and
he says he has no objection. He go on with the case.

Q. Dr. Hoerlein, does that document refresh your recollection as to whether the matter of taking over the Behring Works by I. G. Farben was actually discussed at the Pharmaceutical Main Conference at that time?

A. I don't need this refreshment of my recollection because I related the circumstances about the taking over of this plant yesterday much more in detail.

THE PRESIDENT: Now, counsel, are you introducing that document or has it served its purpose as far as you are concerned when you identified it?

MR. MINSKOFF: We identify it. We will probably mark all of these documents that have been identified into evidence at a given point, unless we especially note they will not be marked in evidence.

THE PRESIDENT: I wasn't certain whether you said for identification or in evidence.

MR. MINSKOFF: Identification.

THE PRESIDENT: Then it will be in the record as marked for identification only and preserved in the files of the secretary.

Q. And, Dr. Hoerlein, it is also true, is it not, that the Behring Works scientific laboratories and production of the Farben Works Combine Main Valley were under the jurisdiction of the defendant Lautenschlaeger?

A. No, the production was under the direction of Dr. Demnitz in Marburg. Scientific problems, research and development was directed by Prof. Bieling and Prof. Schmidt. Prof. Lautenschlaeger from his predominantly physiological attitude could not contribute very much to this because he wasn't an expert on the special field of bacteriology. As a director of the plants combine he had the supreme supervision.

Q. So that both Dr. Demnitz and Dr. Bieling reported to and were under the supervision and jurisdiction of the defendant Lautenschlaeger in their work in that plant; isn't that right?

A. May I have your question once more, please?

Q. Certainly. So that from your answer of "supreme supervision" it is clear that both Dr. Demnitz and Dr. Bisling report to and are answerable to the higher authority of the defendant Lautenschlaeger who was the responsible Vorstand member; isn't that right?

A. I am not informed what the relations of Marburg and Hoechst were individually organized.

Q. But you do know, don't you, that Marburg was under Hoechst's jurisdiction?

A. A chart was submitted yesterday to the effect that Marburg belonged to the plant combine Maingau. That is part of your files.

Q. Did you say — just answer the question.

DR. NELTE: Mr. President, excuse me, please? I have to state something once more that I already stated this morning. The Prosecution seems too polemize against itself. In Document Book II of the Prosecution there is a chart, NI-10029, Exhibit A7. In this chart it is stated in detail and shown in detail what plants and enterprises were under whose jurisdiction. On this chart you can also see what Mr. Minskoff has tried to elucidate by many questions to the witness. I believe that such questions are to be considered irrelevant.

MR. MINSKOFF: If it please the Court, this chart was available when the defense presented its case. Instead of relying upon the chart it's apparently clear from what Dr. Nelte says a long series of questions, creating confusion in my mind as to just where the plants stood, were introduced when Dr. Hoerlein answered those questions. I am just trying to clarify that.

THE PRESIDENT: That's proper cross examination. You may proceed.

Q. Also, Dr. Hoerlein, is it not true that the scientific and technical problems of the Behring Works plant were dealt with in the pharmaceutical and technical and scientific central conferences under your chairmanship in Leverkusen in exactly the same way as all other I. G. Farben plants concerned with the production of pharmaceuticals?

A. In the scientific, technical control conference Herr Bieling participated, among others, before the war, before he was drafted. Furthermore, during a single conference which took place during the war, Prof. Schmidt participated. This conference took place in the middle of 1941. That was the last conference.

Q. The question, Dr. Hoerlein, was; at the scientific control conference weren't the questions involving Behring Work plants treated in exactly the same way and by the same persons who handled and treated the problems of a technical nature which arose in other Farben plants? Now, is that true or is it not true?

THE PRESIDENT: Now, Mr. Witness, it isn't necessary for you to elaborate. You can answer that question any way you see fit. If you feel like it might need to be elaborated in your interest Dr. Walte will be privileged to ask you more questions about it. Now, just as directly and briefly as you can, try to confine your answer to responding to the Prosecutor's question. He has asked you if certain facts were true or not true.

A. I cannot judge the details. I stated yesterday that I was a chemist. I have to accept matters as Prof. Bieling reported them.

Q. Finally, Dr. Hoerlein, is it correct to state that the only point that you wanted to make on your direct examination was that from a purely technical view-point a legal distinction could be made between the Behring Works Marburg and I. G. Hoechst?

THE PRESIDENT: Excuse me, Prosecutor. I really doubt whether it is right to require the witness to appraise the purpose of testimony. After all, he only answered the questions that were asked him and I think that's probably out of the field.

MR. MINSKOFF: I will withdraw the question.

THE PRESIDENT: Very well.

Q. Dr. Hoerlein, from your direct testimony, if I understood it correctly, you said you had no responsibility for the production of

pharmaceuticals at I. G. Farben Hoechst; is that right?

A. That's right.

Q. You said also that you had no responsibility in connection with development of new pharmaceutical products at I. G. Farben Hoechst; is that right?

A. That's also correct.

Q. And also, if I am not mistaken, you said that you had no responsibility in connection with the clinical testing of Hoechst pharmaceutical preparations for possible new uses?

A. That's also correct.

Q. And that with respect to all of these matters at Hoechst the sole responsible Vorstand member was the defendant Lautenschlaeger; is that right?

A. All these things were done under the responsibility of Prof. Lautenschlaeger, yes.

Q. Now, similarly with respect to the Behring Works Merburg, again you had no responsibility in any of three fields I mention just as you had none with respect to Hoechst; is that true?

A. I had no responsibility for Merburg.

Q. And again in Merburg, the Behring Works Merburg, the sole responsible Vorstand member was, the defendant Lautenschlaeger; is that right?

A. To the limited extent described by me when I emphasized that Prof. Lautenschlaeger was not a specialist in that field.

Q. And, Dr. Hoerlein, is the same true for the Lemburg Institute? You had no responsibility for production or for new pharmaceuticals or for the new uses of old pharmaceuticals; is that right?

A. What kind of institute: Lemburg Institute: I didn't understand you.

Q. I. G. Farben Behring Works. The Lemberg referred to as Lemberg Institute.

A. Lemberg?

DR. NELTE: Mr. President, the Behring Institute at Lemberg has not been mentioned in the Prosecution's presentation of evidence in connection with any alleged crime. You can find the institute of Lemberg only on the chart which I just mentioned where it is stated that the Institute Lemberg was under the jurisdiction of Prof. Leutenschlaeger. The fact that this Lemberg Institute has not been mentioned here in the trial brief nor in the presentation of the evidence by the Prosecution, caused me not to deal with it during direct examination of Prof. Moorlein. I ask for your decision, whether it is possible to touch upon facts which were not mentioned during the presentation of the evidence of the prosecution nor in the case of the defendant himself and if they should be inserted as new material in the cross examination by the prosecution now?

MR. MINSKOFF: May I be heard a moment?

THE PRESIDENT: Yes.

MR. MINSKOFF: If Dr. Nelte would refer to the Ding Diary which includes the preparations which were sent to the concentration camp Buchenwald for the criminal experiments which took place there, they will find the Lemberg Institute is one of the places which sent preparations.

THE PRESIDENT: Be that as it may, Dr. Nelte, is, I think, correct in that you are now going into a matter which he did not develop in his examination in chief and I think it's proper to call your attention to the facts because, manifestly, if you bring in something of that kind he must have an opportunity to rebut it. If you think it's sufficiently important to assume that responsibility, this is a defendant on trial and we would not deny you the right to interrogate the witness, but it must be with the clear understanding of the defendant and his counsel to have a timely opportunity of meeting the issue. You can appraise the importance of it from your own standpoint and be governed accordingly.

MR. MINSKOFF: If it please the Court, just one remark. I can't want to burden the record here. No new field is here going to be opened up. The only questions are just along the line of questions developed and will be perfectly clear as having a direct bearing on testimony already in evidence.

THE PRESIDENT: Very well. Repeat your question. The objection is overruled.

DR. NELTE: Mr. President, excuse me. This is the first time that I have had a chance to see the Ding Diary. May I have a look at it, please? The Prosecution, with reference to the Ding Diary, asserts that a shipment of lice was sent from Lemberg to Buchenwald; is that correct? Yes, Mr. President, during the physicians' trial I defended Dr. Handloser. There I saw the same evidence produced: the shipment of lice from Lemberg to Buchenwald. I experienced this particular point when it was raised by the Prosecution. On page 83 of the German document of the final summation of the Prosecution it is stated that this shipment of lice did not originate from the Behring Institute of Farben but from the Behring OKH Institute

in Cracow, Lemberg,

THE PRESIDENT: Just a minute now. If you are in a position to establish that, that certainly would be very appropriate rebuttal, but not here is just the situation; here is a defendant on the stand. Can you hear me?

DR. NELTE: Yes, Mr. President, I do hear you.

THE PRESIDENT: Just a moment. Here is a defendant on the stand. He is asked about another part of the Farben enterprise. We are hardly limited to the strict field of an ordinary witness in a matter of this kind. We take the view that if the Prosecution considers the matter of importance it has the right to show what he knows about anything in connection with Farben enterprises on a pretty broad scope. On the other hand, if the Prosecution does go into matters that you have not presented in your examination in chief, the Tribunal will protect your right to rebut it or to meet it in any recognized manner. Now, there's nothing particularly significant about this present question that is propounded by the Prosecutor. We have ruled and the ruling stands. Let the witness answer. In the meantime we will see that you are afforded an opportunity to interrogate him further about that matter or, if necessary, and you deem it proper, to rebut it if you consider it important enough to merit rebuttal. The ruling of the Tribunal will stand and the witness may answer the question. Now, repeat your question.

DR. NELTE: I regret exceedingly, Mr. President, that you didn't give me an opportunity to point out to you that the fact just now being examined was decided differently by the judgment of the physicians' trial.

THE PRESIDENT: Dr. Nelte, our time is valuable and the Presiding Officer does feel the responsibility to keep the case moving but we are not going to permit this record to indicate this Tribunal is denying any of counsel for the defendants a timely opportunity to say what he thinks should be said in the interest of his client. The time is yours. Make your statement.

DR. NELTE: I wanted to say that in these trials the Prosecution is represented, at the top, by General Taylor. In my opinion it is impossible that the representatives of the Prosecution assert something different in one trial than they assert in another trial here in Nurnberg. In the trial of the physicians, the Prosecution, which cannot be divided, asserted that the shipment of lice from Lamsburg was sent by the OKH Institute in Grcow, to Buchenwald and that was one of the reasons why Gen. Handloser was sentenced to life imprisonment, because it was considered proven that it was the Wehrmacht who actually sent these lice to Buchenwald. I refer to page 68 of the judgment. It's inconceivable to me that in this trial it should be tried to assert that this shipment of lice was sent by a representative of Farben, that is, the Behring Works in Lamsburg, after I, myself, offered to prove during the physician's trial that the shipment was actually effected by Farben.

THE PRESIDENT: Now, Dr. Nolte, I am afraid this situation has been complicated somewhat by the injection of quite a quantity of lice in the case. There's nothing in question about lice, as far as I recall it. The question was one of whether this plant under enquiry was under certain supervision or something along that line. Now, that's all that's before the Tribunal and we will meet the question of whether or not the source of the shipment of lice is important if some question should arise. We have the very highest respect for the judgments of the other Tribunals, but we cannot take time out in the course of this trial to decide what evidence was introduced, what objections were made to it and what significance the other Tribunal attached to it in its judgment. The Tribunal finally and definitely now rules that the witness may answer the question which was propounded to him. Now, Mr. Prosecutor, can you repeat that question so that when the question you previously asked and the one you are about to ask appear on the record there won't be any substantial departure?

Q. The question dealt with the responsibility for the Lamsburg

Institute. The two previous questions were to other parts of Farben and we merely want to know whether the witness's answer given with respect to the responsibility at Hoechst and at Böhrling Works was applied to Lemberg?

A. It's stated in an affidavit of Prof. Lautenschläger that he assumes responsibility for the Lemberg Institute.

THE PRESIDENT: Mr. Witness, you were not asked to relate to the Tribunal what Prof. Lautenschläger may have said in an affidavit. If you know, tell the Prosecutor whether or not the same responsibility did attach with reference to the Lemberg as to the other plants that were asked about. Tell him "yes" or "no", "yes" or "no" with a qualification, or tell him you don't know, whichever fits the case and we will be moving along here.

A. I had no responsibility for Lemberg.

THE PRESIDENT: That's a partial answer at least. Ask another question.

Q. Do you know, Dr. Hoerlein, who would be responsible for the actual production and sales of preparations produced at Lemberg?

A. I stated just now and I don't know if I am supposed to repeat it, Mr. President, I said that in an affidavit of Prof. Lautenschläger, he stated that he had supreme direction of Lemberg.

Q. Now, with reference to the Leverkusen plant, who was the responsible Vorstand member?

A. For what part of Leverkusen am I to answer?

Q. Production of the Leverkusen plant itself.

A. I explained yesterday that Leverkusen consisted of three parts. For what part of that plant am I to answer?

Q. I am not now referring to that small percentage of production which would have taken place at Elberfeld if there were room there but for the entire production, the other 98%, the actual plant. Would you say the

defendant, Dr. Kuehne was the responsible Vorstand member of the plant, the 93% that was there at Elberfeld?

A. Yes, Dr. Kuehne was the plant manager at Leverkusen.

Q. And with respect to Bayer Leverkusen, who was the responsible Vorstand member?

A. The director of the sales combine was Mr. Mann, already stated by me yesterday.

Q. Precisely what were your responsibilities, Dr. Hoerlein, with respect to Bayer Leverkusen?

A. I had no responsibility at all in Bayer Leverkusen.

Q. So that with respect to production of pharmaceuticals—pardon me, I am sorry.

A. The production of pharmaceuticals were not under the name of Bayer but under the name of Farben. Bayer was only the designation of the sales combine.

Q. I understand. I meant to withdraw that portion of the question. Will you describe the make-up of Bayer Leverkusen, the various departments, sections, the main groupings, organization of Bayer Leverkusen?

A. I believe a document has been submitted describing the construction of the sales combine Behring Leverkusen. There's a chart about this subject.

DR. NELTE: That's an error. The chart that Prof. Hoerlein is speaking about has not yet been submitted but it's contained in Book III of Hoerlein and is before the Tribunal.

THE PRESIDENT: Dr. Nelte, do you propose to offer a chart that will supply the information.

DR. NELTE: Yes, Mr. President, I intend to offer it as soon as I examine the witness Dr. Lucherⁿ I can offer it now if it's so desired and with Mr. Minskoff's approval.

THE PRESIDENT: Will the Prosecution be satisfied to let the matter

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rest until the defense completes it's evidence?

MR. MINSKOFF: I think we can save the Court's time if we proceed with the questions and answers and if at any time they want to introduce the documents they can do so later.

THE PRESIDENT: Yes.

Q. Do you know the divisions into which Bayer-Leverkusen is divided?

A. Of course, I know them, but I don't know whether I can enumerate them completely at the moment. I will try, however.

THE PRESIDENT: Just a moment. Counsel has not asked you for that. You have answered the question. He asked you if you know them. You said you did. Perhaps he may not want you to enumerate them.

Q. Among those divisions is there one known as the Scientific Division?

A. Yes, sir.

Q. Who is responsible for that division.

A. For this Scientific Division, Director Dr. Mertens is responsible.

Q. Now, perhaps I didn't fully understand your previous answer. The man -- the person who was completely responsible, I thought, was defendant Mann, in Bayer-Leverkusen. Now, is the Scientific Division a part of the Bayer-Leverkusen?

A. The Scientific Department belongs to the Salis Company in Leverkusen as an organization.

Q. So then, if I understand you correctly, the Scientific Department is also under the jurisdiction and responsibility of the defendant Mann?

A. For the greatest part of its activity, namely, the propaganda activity -- it was completely under the jurisdiction and responsibility of the Defendant Mann; with the minor part of its activities Dr. Mertens himself was charged and responsible. I stated that yesterday.

Q. That is precisely the part that I am interested in -- that small part that you state Mertens is responsible for. Is this one small part a separate organization by itself or is it really a part of the Bayer-Leverkusen, for which Mann is responsible?

A. This is a part of the Scientific Department, called Scientific

Departments I and II. Apart from that, III, IV, V, and VI also existed, that dealt with propaganda. Scientific Departments I and II concerned themselves with the investigation of new products, and for the Scientific Departments I and II, Mr. Mann can not be held responsible because he was a business man, and I can not be held responsible because I was a chemist.

Q. Now, if I understand you correctly, this is one part of I. G. Farben which has no responsibility for either -- to either the sales Vorstand member or the Technical Vorstand member; is that right? But here is a part of the ~~Weyer-Kabitzsch~~ which has no responsibility to anyone in the Vorstand. Is that your answer?

A. There are many departments in Farben where the department chief is responsible for his own work himself.

Q. And Dr. Mortens, then, is responsible to no Vorstand member in Farben? With respect, now, just to that scientific part? I am not referring to the sales part.

A. That is his own responsibility.

Q. And all decisions with respect to scientific research are finally made by Dr. Mortens, is that right?

A. No, no. Mortens was in connection with Hoechst and with us and collaborated with us within the organization. He had only a very small responsibility. Professor ~~Wess~~, my predecessor in this chair, explained the responsibility in detail; the responsibility for the lack of toxic contents of materials was borne by Professor ~~Wess~~, as he himself stated two hours ago.

Q. Dr. Hoerlein, I think the answer has more than covered the question. May I put the question to you this way: For all the testing of pharmaceutical products -- were they made at Elberfeld or Hoechst? The testing, after it has finished its laboratory stage, goes through Dr. Mortens, doesn't it?

A. No, the checking in Elberfeld is done by the director's in

Elberfeld and I are responsible in the last instance. For the Hoechst Plants Professor Lautenschlager is responsible in the last instance.

Q. Didn't you testify that at Elberfeld, immediately after the laboratory tests were made, the preparations were then sent to Leverkusen - I take it by Leverkusen you are referring to Dr. Mertens' part of Leverkusen -- for further clinical testing -- that is, testing on human beings? Now, isn't that right?

A. They were sent to Leverkusen for clinical tests under medical care.

Q. All preparations, then, from Elberfeld, after they passed the laboratory stage, were sent to Dr. Mertens for whatever further action was necessary; isn't that right?

A. Yes, that is correct.

Q. Now, then, the same is true, is it not, of products which were developed at Hoechst, except for the one difference that at Hoechst, after the laboratory work was finished, they sometimes had small scale clinical tests of their own?

A. That is correct, yes.

Q. So that in the therapeutic field the one man through whom all the clinical testing went was Dr. Mertens; isn't that right?

A. That is correct.

Q. Now, to whom in I. G. Farben, if this portion of Bayer-Leverkusen is part of I. G. Farben, did Mertens report?

A. This has been explained in so much detail by Professor Weiss that I can only repeat it if the Tribunal permits me to.

Q. May I interrupt to ask as to whether you know to whom he reports?

THE PRESIDENT: Just answer on your own responsibility, even though it is repetitious, if you can.

A. Yes. Professor Mertens under his own responsibility picked out the most able and appropriate --

Q. May I interrupt? The question was: To whom, if you know the answer, does Dr. Mortens report -- not the nature or contents of the report?

A. I do not understand you.

MR. MINSKOFF: May I try to put it more simply?

Q. Dr. Mortens is the central figure for all the clinical testing. Now, he has many problems to solve in making clinical tests and sending products out for clinical testing. He receives reports on the results of those tests. Isn't there anyone in I. G. Farben to whom Mortens reports and to whom he looks for guidance?

A. I explained that very much in detail yesterday. These reports went to Hoechst to Professor Lautenschlager; they also went to Elberfeld, where I say them, and my collaborators.

Q. Dr. Haeublein, perhaps I haven't made myself clear. I know that Dr. Mortens sends reports out. I asked to whom does he personally report; from whom does he receive his instructions; from whom does he receive guidance? Who in I. G. Farben is above him in his own work? Dr. is he a law unto himself?

A. I said this three times already.

DR. NEITE: Objection, Mr. President, I believe Mr. Minskoff telescoped three separate questions into one. That is very confusing to the defendant. Please, may I ask Mr. Minskoff to divide up this one question into three separate questions?

THE PRESIDENT: The objection is sustained. The question should not be triple. Break it down, Mr. Prosecutor, and ask what you want to know.

MR. MINSKOFF: I will, your Honor.

Q. From whom did Dr. Mortens seek his official guidance in connection with official tasks in Bayer-Leverkusen, on the scientific side?

A. He received the orders from Elberfeld and he --

MR. MINSKOFF: All right, now, Mr. President, is it possible to direct the witness to answer as best he can, if he knows the answer to the question or not?

THE PRESIDENT: Well, the question may hardly be proper. Ask him, if you see fit, by way of a suggestion to be helpful, to who, if anyone, Dr. Mortons was responsible. Let's just get this down to elements and maybe we can get along.

MR. MINSKOFF: Thank you.

THE PRESIDENT: Do you have any objection to my asking him?

MR. MINSKOFF: Not at all.

THE PRESIDENT: Mr. Witness, the Prosecutor seems interested in one simple fact. Who, if anyone, was the immediate superior to Dr. Mortons in Dr. Mortons' field?

A. Mr. President, I stated just now that Dr. Mortons had two functions. One of them was the preparation of preparations ready for the market. In this respect he was subordinate and responsible to Director Mann. Organizationally, he was under Dr. Mann's jurisdiction. He had a smaller task, a second task -- to be the liaison officer between the scientific laboratories in Hoechst and Elberfeld and the clinics. In this latter function Dr. Mortons, as a physician, was himself responsible because Mr. Mann could not take this responsibility from him; he was a business man; and I could not take it from him because I was a chemist.

THE PRESIDENT: I think that answers your question, Mr. Prosecutor.

Q. Dr. Moorlein, do you recall on your direct testimony having stated that in a number of important questions, such as the building of new plants and the hiring of certain personnel, that you had to have the permission of the defendant Torner? Do you recall that?

A. I described that -- I described in detail what I had to discuss with Dr. Torner.

Q. Did you understand my question? The question was: In such questions, such matters as the building of new plants in the pharmaceutical

field, you required Termer's permission before you could proceed?
Isn't that right?

A. We applied for appropriations of credit; they were discussed in the Tea meetings which was under the chairmanship of Termer, and they were approved.

Q. Do you recall whether you testified that you required him, not the Tea's -- his permission in connection with the building of further plants or even such questions as the hiring of certain personnel?

A. For the hiring of personnel I did not require Dr. Termer's approval. However, if I wanted to make a suggestion of promotion -- for instance, if I wanted to give Prokura to someone or appoint someone to the position of director, I would need his approval.

Q. That is precisely to what I was referring. Now, in the pharmaceutical field, Termer is not -- is he an expert to whom you would consult for guidance in the handling of the pharmaceutical section of Farlon?

A. I stated quite unequivocally yesterday that Dr. Termer had nothing to do with the development or responsibility in the pharmaceutical sector.

Q. But you required his permission to even place one of your own personnel in a higher position?

THE PRESIDENT: Mr. Prosecutor, I think, in fairness to the witness, that he has pretty definitely answered that question. He said, not in the ordinary hiring, but in the promotion or giving of greater responsibility he did need to consult him.

MR. WINSKOFF: That is what I intended to convey. I hadn't meant hiring.

Q. Now, isn't that solely because Dordeer was chief of Sparte II?

A. In my opinion, this was done because within a large enterprise one must observe a consistent policy and someone must see that this consistent policy be observed.

Q. Precisely. And even if that someone may not be better qualified in the limited technical sphere, someone, for the sake of uniformity, must make policies?

THE PRESIDENT: I think that is argumentative and a matter commonly found in -- not infrequent to find Junior is superior to Senior, as far as ability is concerned, and we do know that we have to have places of responsibility. I think it is hardly worthy of mentioning it -- that it is a matter of common human experience.

MR. WINSKOFF: The question, may it please the court, is directed to a very limited problem, and I think the next question will clarify it and I ask that I be allowed to continue that line of questioning.

THE PRESIDENT: Very well.

Q. Now, in the case of Dr. Mortons, there was no high person in Farbon, Vorstrand, or otherwise, who unified policy for him and to whom he would be responsible and whose permission he would need; is that right?

THE PRESIDENT: You mean, in the scientific field?

Q. In the limited scientific field which we were discussing.

A. I believe that Dr. Mortons was appointed Director upon the suggestion of Dr. Mann, without my being consulted in any way previously.

Q. I didn't ask any question with reference to how he was appointed.

THE PRESIDENT: Mr. Prosecutor, hadn't the witness very clearly said that Dr. Hortens had two functions and that in the so-called propaganda field he did have a superior, but in the scientific side he was there under or responsible to no man — what we might call a lone wolf — that he ran the department, so far as that was concerned, as an officer of the nature of a liaison officer. It seems to me that you are really getting down hard to where you are repeating a good deal. I don't want to unduly limit your cross examination, but after a while some things become clear even to the Tribunal.

MR. MINSKOFF: Well, the purpose of that line of questioning has been completely served.

Q. Dr. Heerlein, I am referring now to WI 14046, which I ask be marked as Prosecution's Exhibit for identification 1863, and call your attention to the following portion of an affidavit:

DR. NEACE: Objection —

THE PRESIDENT: Dr. Neace, just so that we don't unnecessarily consume time, let the Prosecutor complete his question, please, and Mr. Witness, do not answer it until your Counsel has had an opportunity to make an objection. Perhaps you had better start over again.

Q. Referring to "I-14046, which we take to be marked for identification for the Prosecution as its Exhibit for identification 1863, I call your attention to a portion of an affidavit by Dr. Hortens and ask you whether that refreshes your recollection as to the precise nature of Dr. Hortens' responsibility. He states, "In scientific matters ——" Now I ask —

THE PRESIDENT: Yes, you state your question.

Q. "In scientific matters I was responsible to Professor Heinrich Heerlein and in regard to questions of the I.G. plant at Hoechst to Professor Karl Lautenschlaeger. In case of any possible differences of opinion in scientific matters between Professor Karl Ludwig Lautenschlaeger and myself, Professor Heinrich Heerlein being the chief exponent of the entire pharmaceutical field within I.G. would have decided."

THE PRESIDENT: Now, Dr. Nolte, state your objection.

DR. NOLTE: Mr. Minskoff referred to an affidavit of Dr. Mortens. So far the Tribunal has not had this affidavit submitted to it. If a part is quoted from an affidavit, then the entire affidavit must have been made available to the defendant and his counsel. With all proper care for the conscientiousness of the Prosecution, the Defense must not be deprived of their opportunity to check whether the quotation, and, in particular, the translation, is correct and whether perhaps in this case this is not a part of an affidavit which has been torn out of context and which creates an entirely wrong impression. For that reason I ask that this quotation be not admitted until I have seen the affidavit in its entirety.

THE PRESIDENT: We understand the rule to be that the memory of a witness may be refreshed by resorting to evidence that has been produced by other witnesses, but that rule would not logically go to the extent of refreshing — undertaking to refresh the memory of the witness by what the evidence might be. This affidavit, as we understand the record, is not in evidence, and the objection is sustained.

MR. SPEICHER: Mr. President, may we ask a question? Now we certainly are — in order to be consistent would have to agree that we don't want to get into a situation where we are trying to prove the witness — we are trying to argue with the witness concerning an affidavit not in evidence. I mean, we made our position clear about that before.

THE PRESIDENT: Yes.

MR. SPEICHER: But here we have a little different question. It seems to me, from normally — matters. Where there is a clear clash with respect to someone, where the defendant says the man had no superior. And there we feel that since we have no right to call Dr. Sperlein back to the stand again, we should be allowed to show him this clash and ask him if he has an explanation for that clash. It is not a — solely a question of refreshing his recollection, but to ask him if he has an explanation for that. May we do that?

THE PRESIDENT: No, you are -- you find yourselves in a rather inconsistent position of trying to create a contrast or conflict in evidence by your own cross examination. You either accept the story that the witness has testified to or you will on rebuttal undertake to meet and show that it is not true. You can't set up a straw man here and then undertake to demolish him. The witness has stated his story. If it is in conflict with any evidence that is in the record that you wish to refer him to, you certainly are in the right to do that, but you haven't the right to elicit a statement from him and then try to disprove that statement by evidence that is not before the Tribunal and which you are just merely anticipating. I think that rule is absolutely sound and I think that a referral to the record will show that the Tribunal is quite consistent because you had the same question when you were presenting your case and then Counsel for the Defense was on the other side of the table. I think you will recall that.

MR. MINSKOFF: I take it the objection is sustained then and I can go on?

THE PRESIDENT: That is correct.

BY MR. MINSKOFF:

Q Dr. Koerlein, when a particular pharmaceutical product which has been developed in Elberfeld or Hoechst reaches the point where it is ready for a clinical testing, that is on human beings, and it goes to Leverkusen -- to Bayer Leverkusen -- and is sent out to various testing places, what reports come to Leverkusen stating the results of these tests, who receives copies of these reports?

A Copies of these reports were sent to Hoechst and Elberfeld. From what point on this was true in every case I do not know. Whether from the very beginning this was so handled or not I do not know. The choice of these copies that were sent was left up to the scientific department.

Q Is that Dr. Mertens again?

A That is Dr. Mertens or his chiefs of the departments, Dr. Luecker and Dr. Koenig.

Q Now, there were two types of reports, were there not, Dr. Koerlein? One we will say was received from the various Pharma Bureau which had sent products out for testing, and one which they received directly from places of testing where they had sent the product directly, isn't that right?

A Some correspondence may have been carried on from Leverkusen with some hospitals or clinics directly. I don't know those details. Dr. Mertens undertook this on his own responsibility. It would have been too much for me to worry about every little detail.

Q Do you happen to know, Dr. Koerlein, whether even in these cases where the reports didn't come from the Pharma Bureau but where they came from the testing places, that Dr. Mertens had copies made and then used the same distribution that they used in the case of the Pharma Bureau reports? Do you happen to know that that is so?

A That may be.

Q Now, in addition to the reports which were received by the various interested plants, is there some conference which takes place at which these reports are discussed and the results obtained are discussed?

Q What do you mean by the word conference? Dr. Martens did not participate in my conferences which I held every Saturday afternoon with my scientific chiefs because he was not under my jurisdiction.

Q The question was, were there conferences in which he did participate? Where the results and the reports which kept flowing in from the various places of testing were then discussed?

A Do you mean individual discussions or do you mean conferences?

Q I mean conferences.

A As we already explained there was the central conference, there was the main conference and, in Leverkusen, there was the commercial direction meeting and conference, and I had in Elberfeld my scientific conferences and besides that there were two field agents conferences in the spring and fall with the scientific representatives. Which ones do you mean?

Q Well, of course there was a scientific central conference.

A Yes.

Q At that conference Dr. Mortens attended?

A Yes sir.

Q And at that time were the merits of the various products discussed and the results of the testing discussed?

A That was his duty.

Q At these conferences —

DR. JELINE: Mr. President, I had the impression that the answer which Professor Hoorlein made was not responsive to the question which was put to him so that I assume he misunderstood the question and I would like to ask Mr. Winskoff to repeat his question.

MR. SPEICHER: Mr. President, that is why we have redirect examination and I don't think Doctor Walte should interfere with cross-examination in that connection.

THE PRESIDENT: Well, Doctor Melte shouldn't, and I don't think, would interfere with cross-examination. However, if for some reason he does not understand an answer I think it's only fair to him as counsel for a defendant, that he be afforded an opportunity to know what's going on in the court room. Dr. Melte, do you wish to have the answer repeated so that you know what it was?

DR. MELTE: Mr. President, I asked Mr. Winkoff that he be kind enough to repeat the question which I had not understood and Mr. Winkoff said that he was ready to do so.

THE PRESIDENT: Very well. Go ahead, Mr. Winkoff.

BY MR. WINKOFF:

Q Now, at this scientific central conference is it not true that the merits of the products which were being tested were discussed and the results of the tests discussed by the various persons present, including Dr. Mortons?

A It is a matter of course that Dr. Mortons discussed his particular field of work on all conferences that he participated in.

Q And at this conference was the decision made as to whether the product was ready for a wider area of testing?

A I don't understand the meaning of your question.

Q Let's ask another question. After the results of a particular series of tests were discussed, it would be the function of this conference to decide such questions as whether the product was ready for the open market.

A A conference can not decide any medical questions. The question whether a product was ready for its introduction on the market was the result of an investigation that extended over many years and during those at many occasions it was discussed very conscientiously whether it would be ready now for production — whether it should be broken off — whether it should be pushed ahead — and after the investigation had been completed it was at some time concluded that the product be introduced into the market.

Q Now, I am speaking of the scientific central conference and if I understood your answer you are saying it is not this conference at which decisions were made as to what product is or is not ready for the open market, is that right? Have I understood your answer?

A The scientific central conference took place immediately before the main conference. The number of participants was approximately the same with the exception of the fact that the department chiefs of the commercial department did not participate. Mr. Mann and Mr. Mertens were usually present, as I convinced myself since I looked through the last twenty conference records. It was not so definitely separated whether we discussed this in the morning at the central conference or in the afternoon at the main conference. I don't know where the decision was actually made. At any rate it was made by some responsible body of men.

Q Well, the body of men is what I am trying to clear up. Is your answer then it would be either at the scientific central conference or the pharmaceutical main circle which immediately followed it.

A It would take place at either one of those meetings. Never very definite. It was at one of these two conferences.

Q And you are chairman of both of these conferences -- that is right, isn't it?

A I was the chairman of both conferences. Why I was the chairman I don't want to tell you. I hope that my counsel will ask me for that during the re-direct examination.

Q Dr. Hoerlein, now there was the other branch or main branch of the Leverkusen Bayer, or Bayer Leverkusen, which was not under Mertens but was under Zahn. Perhaps I can ask that question more technically accurate. Leverkusen Behringwerke, which dealt with sero-bacteriological products, in that plant, in that organization, did Zahn have a function similar to Dr. Mertens in Bayer Leverkusen?

THE PRESIDENT: Prosecutor, I wouldn't say that question is improper, but it's one likely to lead to trouble because after all it's calling for

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a matter of comparison.

MR. MINSKOFF: Just generally comparable. This point being technical—

THE PRESIDENT: Just ask him in a general way if it was comparable and that will be all right.

MR. MINSKOFF: Dr. Roerlein, was his position comparable in a general way to that of Dr. Mertens in Bayer Leverkusen?

A Mr. Zahn was a businessman and Mr. Mertens was a medical man.

MR. MINSKOFF: Yes, of course, —

THE PRESIDENT: I think that perhaps is an answer. The Tribunal will rise for its afternoon recess.

THE MARSHAL: The Tribunal is again in session.

BY MR. WILSONOFF:

Q Just a few preliminary questions on the Leverkusen Behring Werke organization.

Dr. Zahn, you testified, reported to the defendant Mann. Is that right?

A Zahn was not a doctor; he was a business man --

Q Pardon me. Perhaps you didn't understand my question. I just asked you whether Zahn reported to the defendant Mann. Do you happen to know whether he did or not?

A I don't know about the details of this commercial organization.

Q Now, do you know Dr. Engelhardt?

A Yes, slightly.

Q Do you have some idea of what his functions were?

A Dr. Engelhardt was either a doctor or a veterinary.

Q And his position in this sero-bacteriological section of Leverkusen -- Behring Werke Leverkusen?

A He probably dealt with scientific questions in that capacity and not with commercial questions, but I don't know any details.

Q Do you happen to know whether he also, in scientific questions, reported to Dr. Herten?

A I don't believe so.

Q Dr. Herten, on your direct examination you described typhus as an enormous war-time problem. You pointed out also that there was no experience in the field of therapeutic treatment for typhus, and you mentioned that although there was a good vaccine, it was available in limited quantities. You stated also that medical and pharmaceutical experts were called in to fight this terrible danger, and you even pointed out that everyone in this field of medicine and pharmacology had a tremendous duty and desire to discuss and explore the solution to the typhus problem.

Dr. Herten, in view of your position as the highest-ranking scientist in the pharmaceutical field of Germany's largest pharmaceutical firm,

did you, during 1941, discuss with any of the German civilian authorities responsible for handling this important problem the ways and means of solving it?

A I mainly discussed this matter with Prof. Kikuth. You mentioned a civilian authority in the year 1941? At the moment I cannot remember any details. It may be that I discussed this matter with President Meissner or somebody like that. It was a very acute subject which was often discussed.

Q Dr. Heerlein, do you recall discussing that subject with anyone in the Wehrmacht during 1941?

A This question is very sudden. I can't reply to that at the moment from memory.

Q Do you recall whether at that time, during '41 when the typhus problem was in the foreground of scientific circles, you discussed it with any member of the SS?

A No I don't remember that. I had very little contact with the SS.

Q Did you know State Secretary for the Department of Health of the Reich, SS Gruppenfuhrer Genti?

A I knew him as a result of vitamin discussion, but I didn't discuss anything about typhus.

Q Thank you. Did you know a Prof. Handloser, the General Chief Surgeon?

A Yes, I did know him as a result of atabrine discussions.

Q Did you know Prof. Reiter, President of the Health Department of the Reich?

A Yes, he wrote an affidavit on my behalf. I do know him.

Q And did you at that time know Prof. Biber of the Reich Ministry of the Interior?

A No, as far as I knew, I did not know him. It may be that he was present during some conference -- a vitamin conference.

Q Do you recall whether at that time you know Prof. Krugowski, the SS Standartenfuhrer?

A I know his name but I didn't know him personally.

Q Do you recall attending conferences at which he was present?

A In the year 1941?

Q Yes, that is right.

A No. I did not attend any conference where Mrugowski was present. That does not only hold true of 1941 but it holds true for every year.

Q Now, with these persons that I have mentioned whom you answered you did know, and who were vitally concerned with solving the typhus problem, do you recall whether you at that time discussed with anyone of them personally possible solutions for the typhus problem?

A I discussed other problems with the gentlemen you mentioned; I did not discuss typhus with them.

Q That was in 1941?

A 1941.

Q Isn't it rather unusual, Dr. Hoerlein, that in the year when these men were almost principally concerned with the threat and menace of a typhus epidemic they did not suggest to you, or you to them, the problem of combatting typhus?

A There was no proposal we could possibly put forth, and it is not usually my way of doing something which I am not called upon to do.

Q When was the first time, Dr. Hoerlein, that you discussed the typhus problem with your own colleagues and associates within I.G. Farben?

A Very early; in the course of our Saturday conferences we naturally dealt with this question very extensively. We considered it as a moral obligation to solve this very serious problem. I can't give you the exact date.

Q Would you recall whether it was in the year of 1941?

A It is possible that it was in 1941. I really don't know.

Q Now, during those important conferences, was any suggestion made by you or your colleagues as to a possible means of combatting typhus?

A Mr. Prosecutor, men are not found during conferences, but are found as a result of intensive work in the laboratory.

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Q But, Dr. Hoerlein, wasn't there a problem, for example,
of producing a vaccine which would work in cases of typhus, such as the
Weigl vaccine?

A That was not our task in Elberfeld.

Q If I may interrupt you a moment, Dr. Hoorlein —

A Yes.

Q I merely wanted to know whether the problem was a problem of producing enough of the Voigl vaccine which was considered reasonably effective, and is that, or was that, at the time the problem?

A That for many other people may have been the major problem, but we in Elberfeld did not deal with it.

Q I am only referring, Dr. Hoorlein, to the conversations which you just said you did have and which you felt was your duty to have in discussing this important problem with your colleagues. I wanted to know whether the problem you were discussing was a problem of producing enough Voigl vaccine to combat typhus. Is that the problem you were discussing?

A No, we didn't discuss that because in Elberfeld and Leverkusen we did not produce any vaccine or any sera. We dealt with the question of whether we could combat typhus in a chemical, therapeutic way.

Q And you took personally no great interest in the sero-bacteriological method of fighting typhus, is that right?

A I never worked on this problem, and it is impossible for any human being to do everything. If a person wants to do something he has to limit himself to a particular field.

Q And I take it that at no time, as far as you can recall, did you have anything to do with the discussions and the planning in connection with the production of a vaccine for typhus? Is that true, Dr. Hoorlein?

A Naturally, I heard that at different places within the I.G. this matter was dealt with. Big problems which were worked upon in other places came to my ears, but we in Elberfeld didn't deal with that question — and I want to make that very clear.

Q I think we can save some time, Dr. Hoorlein if the answers are the answers what you yourself did — not Elberfeld. I am asking questions only about yourself now.

Now, I want to know: Did you personally—I am not speaking about

Elberfeld—take any important part or any part in the planning and in the preparing for meeting the typhus problem through vaccines?

A One day I heard that in Lemberg an institute was to be erected in supplementation to the Marburg production.

Q And that day that you heard that was the only contact you had with vaccines or production of vaccines in the case of typhus, is that right, Dr. Hoerlein?

A I don't know how to understand that question.

Q I think it was my fault. I think I can say it more clearly.

Other than this time you just heard about the building of Lemberg for the production of vaccines, you yourself played no part; if I understand your testimony correctly in any of the planning for production of vaccines or any of the discussions on production of vaccines? Is that right?

A Naturally, after I knew that this typhus institute was to be erected, and whenever I was asked by anyone whether the I.G. was active in this field, I probably discussed my knowledge of this institute. In addition—

Q Will you state just simply what connection, if any, did you have with the Lemberg Institute, its planning, its construction, and the very idea of even having a Lemberg Institute? Just what was your role in that entire program?

A That the Lemberg Institute, during a meeting on the 29th of December, 1941, was founded, I have seen on the basis of a number of documents which were introduced by the Prosecution —

Q May I interrupt?

A Yes.

Q Could you state what role you played in connection with the Lemberg Institute, its construction, its foundation, its production of vaccines?

A The construction and the credits for that construction—

Q Dr. Hoerlein, could you state what role, if any, you played?

A I don't really know what you are getting at, Mr. Prosecutor.

MR. BELMTE: Your Honors, would you please permit the defendant to say what he has to say on the project concerning this matter? I don't think that this matter can be done away with with just a few words. We are now seeing that the defendant is willing to answer the question, and therefore I ask you to permit him to make his statement which, it seems, is of great importance to the Prosecution, to permit him to give his answers.

THE PRESIDENT: The witness is not required to answer the question in a word, and I thought he had started to say something that was responsive to the question a moment ago when he started to say about what had occurred at some meeting which he presumably attended.

Mr. Witness, the Prosecutor's question is calculated to have you tell the Court what, if anything, you had to do with the development of the plant and the production of the typhus vaccine.

If you understand the question and can answer it, do so as briefly as you can.

THE WITNESS: Mr. President, I understand you perfectly. I can say that personally I only experienced what was initiated by other people. I knew that Marburg was producing typhus vaccines. I knew that the serum department in Leverkusen, in view of the great danger, attached importance to increase that production in Lemberg by the institution of a new building at Lemberg. Furthermore, I knew that through the plants which had to deliver goods to Marburg preparations were made to execute the project. I furthermore knew that Director Jaehne obtained credits in the amount of 600,000 marks to the TEA which was approved by Dr. Ter Meer in his capacity as chairman in order to build up this institute at Lemberg. Furthermore, I knew that, for instance, Goering, during that conference of which I spoke yesterday, tried to find out what the I.G. Farben intended to do in this field. After the institute was finally built up, I looked at the finished building, in view of the importances of that project. That was at the time when we already had

our own chemo-therapeutical development.

And if the Prosecutor has any specific question in this regard, would you please ask him to direct it to me so I can reply to him?

BY MR. WINSKOFF:

Q Please, just one question. What did you do in connection with the building of the Lemberg Institute?

THE PRESIDENT: It assumes that he did. Perhaps, in fairness to you, Mr. Witness, the Tribunal will add "if anything" so you will have a full scope now. And the inquiry is limited to the building of the plant at Lemberg.

What did you have to do if anything, with reference to the building of that vaccine plant?

A Nothing.

THE PRESIDENT: That is an answer.

BY MR. WINSKOFF:

Q Dr. Reickein, when did you learn for the first time that the defendant Mann had discussed this problem of production of vaccines with Dr. Genti?

A I really cannot remember—as hard as I may try.

Q And knowing the workings inside Farben as you do, could you state whether, in a problem as important as the typhus problem was at that time, the defendant Mann would discuss the solution of the problem with the Reich medical authorities on his own?

THE PRESIDENT: Mr. Prosecutor, that question is too much in the field of speculation as to what some man may have discussed with someone else. The Tribunal will sustain the objection to that in the absence of the objection.

MR. WINSKOFF: Perhaps the question was not clear. I had not intended to elicit the conversation but I wanted some information on whether, knowing the organization of Farben, would that kind of a question be discussed at all without proper clearance with other persons in Farben.

JUDGE MORRIS: Well that would be a pure conclusion on the part of the witness. You are not asking for any facts, Mr. Henskeff. You are not asking him if Mann did discuss the order, if he knows anything about it. You are just asking for a pure conclusion. I would not think that would be proper examination, cross or otherwise.

MR. HENSKOFF: I was trying to get at the fact of the practice in Farben on a clearance of certain types of problems. But I will go on to another question.

JUDGE MORRIS: If he knows what the practice is, ask him what the practice is, but don't ask him what conclusion might be applied to a certain set fact. If he knows they have the practice, and he knows where it is, he can certainly testify to it, but not to a question like that.

BY MR. HENSKOFF:

Q. As a matter of practice, Dr. Huerlein, would a man from the commercial department undertake scientific discussions about clearances with the Scientific Department of Farben in the ordinary course of events.

A. You didn't actually formulate a question, just a sentence which I did not quite understand. I only got half a sentence through.

Q. The question was, as a matter of practice, was it customary for a man in the Commercial Department of Farben to discuss scientific questions with authorities without either clearance or disclosure to the scientific part of I.G. Farben?

A. I cannot answer this specific question with yes or no. I have to give you a sentence as an answer. May I do that?

Q. You may do that.

A. Mr. Mann, naturally, in the course of the war, had to discuss questions with Mr. Conti which were not of a scientific nature, for instance, the supply of drugs, the acquisition of stores, etc. It is quite possible that during such an occasion, in the normal way of usage,

a question of typhus would come up, but I really do not know that. You would have to ask Mr. Mann himself.

Q. Dr. Hoerlein on direct examination you stated categorically, that with respect to the meeting of the 29th of December, 1941, you did not receive and you were not sent any one of the three sets of Minutes which were drawn for that meeting. Is that true?

A. Counsel, in view of the importance which you seem to attach to this question I have noted down my reply, and I am going to repeat it to you. My reply was to the question of my counsel whether I had seen those three records, the following, verbatim:

"In view of the importance which the Prosecution seems to attach to these documents, I have looked through all records which were accessible to me without even finding the slightest hint that I had seen them before. Moreover, I can find nothing in these reports which seems to indicate an intention of inadmissible experiments."

That was my reply.

Q. By that reply do you intend to create the impression that you had or had not received copies of any of these reports?

A. I only had the intention to tell the truth. I had no intention to create any impression whatsoever.

Q. Can you say now whether copies of any one of those three reports, or all three of them were in fact sent to you?

A. I can only repeat what I said yesterday. Not one word more, not one word less.

Q. The statement you just read, Dr. Hoerlein, you have analyzed the documents and you find nothing in your analysis which leads you to believe that you saw it; now apart from the document, do you recall whether you ever received one of those copies?

A. I see them now naturally; they are in the document books.

Q. I am referring, Dr. Hoerlein, to the time when the documents were first sent out. This is the meeting of the 29th of December, 1941.

Dr. Dembits, Dr. Riber and Dr. Zahn each wrote a separate set of minutes for that meeting. I am interested now in the answer to an important but very simple problem. Did they send copies of the minutes which they had drawn to you?

A. Shall I read the reply once more which I just read?

THE PRESIDENT: Aside of the records that you have examined, do you have any independent recollection of them having sent those documents to you?

THE WITNESS: Mr. President, I really cannot remember, because lots and lots of documents have been sent to me.

BY MR. HINSKOFF:

Q. Dr. Hoerlein, you pointed out that you have since read those documents very carefully?

A. Yes.

Q. And having read them carefully, did you remember whether you saw them before?

THE PRESIDENT: Now that, Mr. Prosecutor, he says he has no memory of it. He searched the records and finds nothing that reminds him of the fact that he did receive the documents.

THE WITNESS: It maybe or may not be. I really don't know.

THE PRESIDENT: That question is definitely answered.

BY MR. HINSKOFF:

Q. Could you state, Dr. Hoerlein, whether minutes of an important meeting of that character, in the Pharmaceutical field, attended by three representatives of Farben, would ordinarily, in the ordinary course of the conduct of your business, be sent to you?

A. What was that, I didn't quite get your question?

Q. I will repeat that question. Completely apart from these minutes, the question I am asking you is whether at meetings where extremely important problems are discussed in the Pharmaceutical field, that are attended by three Farben representatives, is it customary,

that you should receive a copy of such meetings.

DR. HELKE: Objection. I consider this question as being too general, particularly since in addition to the general phrasing of the question, a concrete indication is given of the three members participating, and since the implication is again the meeting of the 29th of December, 1941. I ask, with the permission of the Tribunal, that the member of the Prosecution should put this question concretely in order that it can be answered in that way by Professor Hoerlein.

THE PRESIDENT: That objection will be overruled. If the witness knows he may say whether or not there was a practice that minutes of the type of the December 29 meeting, were ordinarily dispatched to the persons who attended the meetings.

That is what you are trying to find out, Mr. Prosecutor?

MR. LINSKOFF: That is right, Your Honor.

THE PRESIDENT: You may answer that.

A. Persons who participate in a meeting usually receive a record of that meeting but I did not participate in that meeting of the 29th of December.

BY MR. LINSKOFF:

A. You have not answered the question.

THE PRESIDENT: I think that is an answer. I think that is a complete answer. It may not bar other inquiries, but it is an answer, so far as it goes.

BY MR. LINSKOFF:

Q. Dr. Hoerlein, quite apart from whether you received a copy of any of these reports, wouldn't the actual decisions made at that meeting, - that type of meeting be communicated to you as Chief Pharmaceutical Manager in all I.G. Farben?

A. I stated before that in some way, at the beginning of 1942, I learned that an Institute was to be constructed at Lomborg. Whether I learned that knowledge through the record of the meeting, whether

Mr. Mann told me about it during lunch, whether perhaps this was reported during a conference of the directors at Leverkusen, I do not know.

Q. Dr. Hoeferlein, referring now to HI-13580, which I ask be marked as Prosecution's Exhibit 1864 for identification, I ask you, do you recognize that document?

One minute - its a copy of the minutes of the 29th of December meeting, prepared by Director Zahn, another copy of which is now in evidence as Prosecution's Exhibit 1606, in Book 84. Have you got the document?

A. Am I to identify an original document? In what document book is it?

Q. Another copy of the same document is now in evidence as Prosecution's Exhibit 1606, in Book 84. It is, incidentally, on page 84, 87 of the German.

DR. HELTZ: Mr. President, but first let me state formally that the document HI-12181 which is submitted by the Prosecution as Exhibit 1606 was obviously incorrect. I don't want now to state that this was incomplete but according to the statement of location given on the last page in Document 12181, it isn't contained in the distribution list of the document which is being submitted now, therefore, I must insist that the original is being presented here. Under these circumstances I cannot accept this photostatic copy because since it isn't certified it cannot be a piece of evidence.

THE PRESIDENT: Now, as we understand the record a document has been passed to the witness and he has simply been asked whether or not he recognizes that document as a copy of the record of the meeting of 29 November made by Mr. Zahn; is that all?

MR. HENSHOFF: That's right, Your Honor.

THE PRESIDENT: The witness may answer that question when he has examined the document. As I understand it the reference to the copy of the instrument already in evidence is pure surplusage. We are not concerned with the copy. It is a copy of the document in evidence. The witness has been handed what purports to be a photostat of a document and asked a simple question as to whether or not he does or does not recognize it as a copy of the record of the meeting of 29 November made by Zahn; is that correct?

DR. HELTZ: Mr. President, the defendant replied to that question. The document is identical with Document HI-12181. Only a few passages are missing. He already replied to that question by saying it may be, it may not be.

THE PRESIDENT: Then it may not do any harm to let him reply to it again. What do you say, Mr. Witness, as to whether or not you do or do not recognize that as a copy of the minutes of the meeting of 29 November made by Dr. Zahn?

A. The first part of this document is identical with the document

which is already in evidence. Then we find the second part of the document a distribution list and on the distribution list it says: "The original to be sent to Mr. Mann, copies to Lautenschlager, Hoerlein, Demitz, etc. This was the same question which was put to me before; "do you know the document or don't you know?" As I replied, it may be or may not be.

Q. Mr. President, may I interrupt at this point? There's been some misunderstanding as to what has been attempted here and I think it's partly due to the question that's been asked by the Prosecution. There were three minutes of a meeting in evidence and there was a reference to a particular set of minutes in evidence. That evidence was inadvertent. The witness has testified that he read those three sets and he has examined them and is familiar with their contents. This is an identical copy with one of those three sets with one additional feature. Typed at the bottom of the last page appears a distribution list which did not appear on the other document which is in evidence and the witness was asked whether that document is the same as the one in evidence.

THE PRESIDENT: Well now, that's not a competent question. That calls for a comparison and the documents will speak for themselves. If they are the same he can look at it and tell it. If they are different he can tell it. The objection is overruled on your statement. The witness should not be asked to make a comparison but anybody can look at it and tell whether it's the same document, same contents.

MR. KERSHOFF: There's no contention that the witness was present at that meeting and it would be difficult to recognize a copy of that meeting.

The PRESIDENT: Well, if it's like the document in evidence you can see it. If it's different it shows on its face and that doesn't call for testimony on the part of anybody. Ask your next question.

Q. At any rate, Dr. Hoerlein, you testified that you studied the contents of the document recently and that you found nothing in that document which would lead you to believe that anything criminal or anything illegal was contemplated to be done as a result of that meeting; isn't that right?

A. I cannot reply to this question with a simple "yes" or "no" but I have to state one or two sentences if you want me to reply to those.

Q. You don't understand the question. It is only whether you stated whether you had read that document and studied it because you said it was important and you found nothing criminal in it. Now, is that what you stated?

A. Yes, I have stated that, yes, but I must add this. Today one reads a letter dated 1941 under a different view-point than in the year itself but even through now we know what has happened in concentration camps.

Q. But, Dr. Hoerlein, you read this letter recently and if I understood your statements having examined it recently you found nothing therein which would indicate to you that anything criminal was intended in connection with the experiments?

THE PRESIDENT: Mr. Prosecutor, that letter speaks for itself. It doesn't call for an opinion of a lay-witness or an expert as to whether something criminal can be found in it. If anything criminal appears in it it's there for anybody who reads it. One person might deduct something different from another. That's hardly a proper enquiry.

MR. LINSKOFF: If the Court please, Mr. President, the witness on direct examination was given copies of affidavits and other documents in evidence and asked to comment on them, what did he think of them, what did they mean to him and how did they implicate him in any of the things charged with here. He had commented on these documents

on direct examination at length. I think the record should show on cross examination he made those comments.

THE PRESIDENT: Very well. Why don't you direct his attention to that portion as is criminal and direct his attention to it and ask him what he thinks about this. You have the documents. There's no use in taking all of this time. If you think his answer was improper direct his attention to something in it and ask him what he thinks about it.

Q. Dr. Moorlein, do you recall in the minutes of those meetings, the statement that tests had been made with respect to 3,000 persons with the Farben vaccine and that the vaccine had been found reasonably effective? Do you recall a statement by Prof. Kutische in that meeting?

A. On what page?

Q. May I go on in the meantime until we find the page and call his attention to it? Do you recall there was a discussion, Dr. Moorlein, as to the comparative effectiveness of the several vaccines taken up in the meeting, the Koch's vaccine, the Jaigl vaccine and the Farben-Bohringwerk vaccine? Do you recall that discussion in that meeting?

A. Yes.

Q. Is that your answer?

A. I must withdraw the "yes" if you won't let me go on. I can't reply to your questions with a simple "yes" or "no" and if you won't permit me to make a few sentences in reply I shall not answer it at all.

Q. Just a moment; I will ask you the question which will give you the chance to elaborate but there are certain questions we want you to answer now and we can't get the full question put to you. All I asked and all you have before you is whether there was a discussion of the comparative effectiveness of these vaccines?

DR. HELGE: Mr. President, you have asked counsel for the Prosecution to read that passage of the report from which, according to his

opinion, it becomes apparent indications are made and conclusions can be drawn as to crimes. You asked him to read that passage and then to give the defendant an opportunity to state whether he considered these passages as having criminal intent or as he said yesterday, that it was impossible to draw any conclusion as a crime having been committed.

THE PRESIDENT: Mr. Prosecutor, this Tribunal knows that you have under consideration three documents of some size. The witness testified in substance in chief that he had examined those documents and found nothing in them that led to the conclusion that they disclosed criminality. You have a right to cross examine the defendant but you shouldn't state your own conclusion as to what the documents contain. If you will take up one document and direct the attention of the witness to something before him and ask him what he has to say about that, it would be proper cross examination.

MR. MINSKOFF: I had intended merely, if it please the Court, to refer to three or four different portions of the meetings and then draw the conclusions, or, have the witness draw conclusions from those portions, but we never got to that portion because when the answer came, the witness's answer was a complete defense of what the document says.

Q On page 35 of the English and page 52 of the German, in Book 64, it is pointed out, is it not, that in the third paragraph "there are limits to the amount of Weigl's vaccine which can be produced and that in the comparably short time it will be necessary to find a vaccine which is to be produced more quickly, in greater quantities, than Weigl's vaccine?"

A Is that a crime of war? Is that a war crime?

Q Dr. Hoerlein, no one sentence will give that indication. Will you answer one sentence at a time? We can probably get you there.

THE PRESIDENT: What is the question?

MR. MINSKOFF: I was calling --

Q I was calling your attention to the portion of the minutes which state that there was a shortage of Weigl's vaccine and it is required other vaccines to be produced more quickly.

THE PRESIDENT: Do you find that, Dr.?

A "In a relatively short time greater amounts are to be produced." Yes.

THE PRESIDENT: Now, what is your question, Mr. Prosecutor? He has his attention on it.

Q Is it not stated that there can not be adequate amounts produced of the Weigl vaccine and that therefore other vaccines should be sought?

THE PRESIDENT: That document either says it or doesn't say it, and it is going to help us very little for a witness to tell us what a document in evidence says.

MR. MINSKOFF: I agree, may it please the court, that the question is completely improper as put. It was merely that having testified both as a witness and as an expert I was going to put the questions, state the

facts are hypothetical as they appear and get his opinion. I thought perhaps he expressed --- To refer to the document and then go the question.

THE PRESIDENT: Well, now, you have done that, and the defendant says that he sees that part of the document, to which you are referring. Now, when you get ready, ask him the question about it, but not about what the document says. That would not be helpful because we can read that.

Q Dr. Heerlein, in view of the fact that tests on a reasonably large scale, 3000 persons, had already been made of the Behring work vaccine ---

DR. MELTE: Objection. That is not true because in the document there is no mention made of three thousand persons --- just three thousand dosages.

MR. MINSKOFF: I will change the question to three thousand dosages.

DR. MELTE: Your Honor, would you please ask Mr. Minskoff to read this sentence in its verbatim form so that the defendant can see exactly what it says there. Three thousand dosages were used in the vaccination.

THE PRESIDENT: Well, again, gentlemen, the document speaks for itself.

MR. MINSKOFF: We were in complete agreement on the kind of persons given those dosages and there is no question about the effects. I say, when the facts of the type of personnel who had been inoculated and that always when it was given that it was fairly effective and it was then decided --- it was then decided to test in a comparative experiment the comparative effectiveness of the Behring vaccine and other vaccine. That standing alone, what kind --- (by I ask what kind of tests would you think were contemplated?

A From this document every objective expert can only draw one conclusion --- that clinical tests were intended and no experiments. If I am speaking of endangering persons I am speaking of persons who in the east and were active in some position where they might be in danger. For instance, we mentioned yesterday that this was the reception person in

some clinic where people were suffering from lice or personnel working in a typhus hospital, etcetera, etcetera. I should like to state that this document for every objective observer is a strict proof against any conclusion that inadmissible experiments were being permitted.

Q I think you are going a little further now -- The tests which are referred to in the document, I agree, are perfectly legal tests, but having reported that such tests were made and it was then decided that they want to determine definitely whether your vaccine was effective, what other kind of tests would you think were contemplated, particularly in view of the fact that they had reported on three thousand tests, then completely undecided?

A From the three documents it becomes clearly apparent what the situation was. Professor Gildemeister wanted to have his own vaccine produced. Professor Gildemeister was opposed to Behring vaccines although the Behring vaccines were already considered as being valuable and effective. Under these circumstances a repeated large scale experiment using people in danger was decided.

Q Now, Dr. Heerlein, if as a result of that meeting I.G. Farben sent for testing one hundred doses of its vaccine, would it then become quite clear to you that what was intended was an experiment other than on persons exposed under normal conditions?

DR. MELTE: Objection.

THE PRESIDENT: Dr. Melte.

DR. MELTE: Your Honor, this question was quite hypothetical and calls for an assumption of the defendant. It, therefore, can not be answered.

MR. LINSKOFF: This man, if it please the Court, is a technical expert. He states that he can not answer the question as a scientist. Then I will take that as his answer.

THE PRESIDENT: Mr. Defendant, do you understand the question that the Prosecutor propounded?

THE WITNESS: Yes. I don't know to whom these hundred dosages were sent. If a large number of people are in danger, it is likely that a large amount of dosages are being sent out; if only a few persons are in danger, fewer dosages are being sent out. That holds true of all distribution of drugs.

Q Dr. Hoerlein, the question that I put to you was, as is clear from the documents now in evidence, that after this meeting and as a result of this meeting Farben then sent out for the tests contemplated by the meeting 100 doses. From that fact alone, would it be perfectly clear to you that they had not intended normal clinical tests, since if they had not intended normal clinical tests, since if they had only intended that they had already the results of three thousand doses?

A I have already stated that I would have concluded that not three thousand persons were in danger but only 50 at that particular spot and that such an amount would have sufficed.

Q Would you still have concluded that if, when you sent the vaccine out you specifically mentioned the meeting which took place, the agreement to test and you state you are forwarding it for the purpose of testing, would you still assume that a small number of persons were sick, or exposed to sickness?

A I didn't understand the question. I am sorry.

DR. NELTE: Please ask Counsel to repeat the question.

A Don't put such a long question. Put it briefly. It is a very hard to understand long questions.

Q I am sorry. I will try to put it the best I can.

If I.G. Farben sent out 100 doses and in a forwarding letter stating that "in reference to the 29 December meeting for the making of comparative tests we are forwarding these one hundred doses", would it be clear to you, after tests had already been made on three thousand, that the tests for the one hundred doses were not intended as normal clinical tests but as special controlled conditions?

A No, Counsel.

DR. MELTZ: Objection. I object to the formulation of that question, Mr. Minskoff, as this letter is not in his possession.

MR. MINSKOFF: It is in evidence.

DR. MELTZ: Then put the letter to the defendant so that he may reply to it. Your question is not clear..

Q Mr. Hoerlein, have you got the Document Book?

THE PRESIDENT: It is announced that tomorrow morning the Tribunal will convene in Room 70 on the first floor of this building, that in agreement with the understanding we had yesterday, sufficient defendants will be excused to accommodate them to the facilities that that room affords. There may be some slight problem with reference to Counsel for Defense so far as seating capacity is concerned. We shall not be too strict on the enforcement of the attendance of Counsel but we will try to find a place for everyone who needs to be present at tomorrow morning's session. We anticipate that this room will again be available to us at 1:30 tomorrow.

The Tribunal is now in recess until 9:30 tomorrow morning.

(The Tribunal in recess until 9:30, 5 February 1948.)

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Target 3

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NATIONAL ARCHIVES MICROFILM PUBLICATIONS

OFFICIAL RECORD

UNITED STATES MILITARY TRIBUNALS NÜRNBERG

**CASE No. 6 TRIBUNAL VI
U.S. vs CARL KRAUCH et al
VOLUME 19**

**TRANSCRIPTS
(English)**

5-11 February 1948 pp. 6427-6881

Official Transcript of Military Tribunal VI,
in the Matter of the United States of America
against Karl Krauch, et al, defendants, sitting
at Nurnberg, Germany, on 5 February 1948, 0930,
Justice Shake, Presiding.

THE MARSHALL: Persons in the Courtroom will please find their
seats. The Honorable, the Judges of Military Tribunal VI. Military Tribu-
nal VI is now in session. God save the United States of America and this
Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: You might make your report, Mr. Marshall.

THE MARSHALL: May it please your Honor, the defendants Buete-
fusch, Buerger, Duerrfeld, Ambros, Schneider, von der Heyde, Kugler,
Krauch, Schmitz, Haefliger, Ilgner and Lautenschlaeger are absent from the
Courtroom.

THE PRESIDENT: The defendants named by the Marshall are excused
from attendance today on their applications. May I enquire if counsel
and the defendants are situated so you can endure the ordeal until noon
until we get back to our regular quarters? Is everybody all right. Are
there any announcements to be made preliminary to the resumption of the
trial? I think we are ready to proceed and Judge Morris has something to
say.

JUDGE MORRIS: Just a word for the record and I am speaking for
myself personally. The situation in this trial as far as the examination
of the witness Hoorlein is concerned has degenerated to a point where I
think that nothing further can be gained by continuing the examination of
this witness in any respect. I have suggested to my colleagues that we
terminate the examination of the witness Hoorlein and dismiss him from
the witness-stand because the admonitions of the President, yesterday,
both with regard to the concise questions and with regard to the responsive
and direct answers on the part of the witness on the stand were not
heeded. For that reason I proposed that there be no further cross exam-
ination and no re-direct examination and that the witness be dismissed
from the stand and that we go on with the next witness. However, my

colleagues feel that the interests of justice requires some further opportunity for examination. For that reason the examinations will continue but I wish to make my position clear on the record.

THE PRESIDENT: The other members of the Tribunal share the view of Judge Morris to the extent that we became convinced yesterday that the cross examination of this witness is not serving any good purpose and that it was doubtful whether or not any further re-direct examination would be helpful. However, we have for the time leaned on the side of permitting the examination of this witness to continue in the hope that the examination, the cross examination and any re-direct examination, will be calculated to be helpful to the Tribunal. We have reserved to ourselves, however, all of the members of the Tribunal other than Judge Morris, the right to re-consider this matter and to join with him if matters aren't improved over what they were yesterday. What we have said applies both to the examination of this witness and to his answers and we do not feel that either had been particularly helpful in producing the facts with which this Tribunal is concerned. With these observations I feel that counsel is advised of what is troubling the Tribunal and the cross-examination of the witness may proceed.

HEINRICH HOERLEIN (resumed)

CROSS EXAMINATION (continued)

BY MR. MINSKOFF:

Q. Dr. Hoerlein, in the meeting of 29 December 1941 the minutes of which are now in evidence as Prosecution Exhibit 1606, it is stated that the Behring Works will receive an order to establish an institute for production of typhus vaccine. Dr. Hoerlein, did you receive a copy of such an order?

A. I already said yesterday that I could not remember.

Q. Dr. Hoerlein, you testified that, you did not participate in the planning or establishment of the new institute for the production of typhus vaccine known as the Loebberg Institute?

A. Yes, I said that.

Q. Dr. Hoerlein, I refer now to NI-14059 which we ask to be marked as Prosecution Exhibit for identification NO. 1865 which is a memorandum from Director Zahn.

DR. WELTE: Mr. President, I should like to state that there is a very awkward noise in my earphones and it is therefore impossible for me to follow the proceedings. I don't know whether this is particularly the case with my earphones or whether all defense counsel feel the same way. I didn't hear and my colleagues have the same trouble.

THE PRESIDENT: I fear we are all going to suffer some inconvenience along that line. I have been led to believe that we have perhaps been spoiled by the better accommodations of our regular quarters. However, I have the assurance of the mechanical staff that they will do what they can for us. If matters get entirely out of control so that you do not know what's going on please indicate to the Chair and we will try to remedy the situation as best we can. Mr. Minskoff, in view of what Dr. Welte has said, would you mind re-stating again what you started to say and, Dr. Welte, let me know if you have any difficulty in hearing. I say further, I am just advised that conditions under which we are working cannot be remedied. We will have to endure this or suspend. One thing perhaps does aggravate the situation; the small size of the Courtroom and as much as we can keep down unnecessary noises I think it will perhaps be helpful to all of us. Now, Mr. Prosecutor, if you will start again we will see how we can get along.

B Y MR. MINSKOFF:

Q. Dr. Hoerlein, you testified that you did not participate in the planning or establishment of the new institute for the production of typhus vaccine known as the Losberg Institute. Now, I show you Document NI-14059 which we ask be marked as Prosecution Exhibit for Identification 1865. This is a memorandum from Director Zahn to the defendant, Dr. Mann and Director Brueggemann. I call your attention to the first paragraph which reads: "Re: Typhus Institute.

A. I did not understand one single word. It's important for

me to understand.

THE PRESIDENT: The mechanical department has suggested that we recess temporarily in an effort to try to remedy the situation. The Tribunal is in recess but please stay about and we will have the Marshal notify you when we are ready to re-convene. This Tribunal will now rise.

(a recess was taken)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Now, Mr. Prosecutor, will you please start again and we will see how we get along.

HEINRICH HOERLEIN (resumed)

CROSS EXAMINATION (continued)

BY MR. MINSKOFF:

Q. Dr. Hoerlein do you now have the Prosecution Exhibit 1864 marked for identification before you?

A. Yes, I have.

Q. I call your attention, Dr. Hoerlein, to the first paragraph which reads: "Re:Typhus Institute Lemberg" and states: "I wish to make the following additional remark on the attached report by Mr. Neumann about his trip to Lemberg and the negotiations with the various authorities. On the basis of the conferences on the subject which took place on Monday, 19th inst., in Leverkusen in the morning and at Prof. Hoerlein's request in Elberfeld in the afternoon." I ask you, Dr. Hoerlein, whether that portion of the document just read refreshes your recollection as to the nature and extent of your participation in the planning and construction of Lemberg?

A. It becomes apparent from this paragraph that it does. May I also say that it was not worth my while to go there.

Q. Does that portion of the document just read to you, Dr. Hoerlein, refresh your recollection as to your part in the planning and construction at Lemberg Institute?

A. I neither planned nor constructed the Lemberg Institute. It was constructed by Dr. Jachma and Dr. Lautenschlaeger.

Q. Dr. Hoerlein, it is true, is it not, that you placed Dr. Goennert of your Elberfeld Plant at the disposal of the Lemberg Institute?

A. May I answer one sentence in reply to this question? Dr. Goennert is an associate of Prof. Kikuth. Prof. Kikuth at the beginning of the war, came to me in order to prevent Dr. Goenner's being drafted into the Army. He then recommended to me to bring him to Cracow to Dr. Wohloath.

in order that he might there carry out tests, animal tests, with respect to virus research especially for trachoma. Mention was already made about tests being performed about trachoma with the help of B-1034. These tests had been concluded in Lemberg. The new institute was to be established. The questions now arose whether we should permit Dr. Goennert to be drafted into the Army or whether he should see to it that Dr. Goennert be transferred to Lemberg temporarily. Dr. Goennert left Elberfeld and entered the administration of the Lemberg Institute which was under the leadership of Prof. Lautenschlager.

Q. Dr. Hoerlein, did you or did you not use your influence with Goering's office to obtain assistance for the Lomborg Institute?

A. Would you please repeat that question. There is a certain noise in my earphones--quite a strong noise in my earphones.

Q. Dr. Hoerlein, did you or did you not use your influence with German Goering's office to obtain assistance for the Lomborg Institute?

A. I have already stated that at the beginning of the year 1941 I was requested by Goering directly to make a report on supply of the home country and the front with drugs, and that Goering at that time discussed the question of typhus danger and the danger of lice.

DR. HELTZ: --

THE PRESIDENT: Just a moment. Dr. Helts, you said something that the Tribunal did not hear. Will you go to the microphone please and make your statement.

DR. HELTZ: Your Honors, I interrupted because there would have been a sense mistake distorting in the record if the testimony of the defendant had been left to remain where he said that he spoke to Goering in the year of 1941. The prosecution will agree that we are now concerned with the year of 1942.

A. It becomes apparent from this letter that the conference with Goering took place before 20 January 1942. On the occasion of this conference with Goering, who knew of the plan to establish the Lomborg Institute, probably because he had been informed by Dr. Conti, and who showed great interest in that plan, his personal physician, Dr. Umberze, was present too. I naturally reported to Dr. Zahn about this conference and he later asked me whether Goering wouldn't be used as a donor, as it were, in order to get him to assist us in many ways. Then, of course, I told Zahn, "You can do that" and that is my share of work done for the Lomborg Institute."

Q. And as a result of your intervention with Dr. Umberze, whom you just mentioned, you succeeded in obtaining for Lomborg the assistance that they required, isn't that right?

A. What actually happened thereafter I don't know. After giving this advice I had done my share in the whole Lemberg affair.

Q. Dr. Hoorlein, referring back for a moment to the meeting of 29 December 1941, Prosecution's Exhibit 1606, Document Book 84, German page 47, paragraph 3, it is stated "Clarity about the effectiveness of the various vaccines is to be established as soon as possible."

A. I beg your pardon. I didn't quite get you.

Q. Paragraph 3, Dr. Hoorlein, where it states "Clarity about the effectiveness of the various vaccines is to be established as soon as possible by means of a comparative experiment with all the vaccines at present available." Now, Dr. Hoorlein —

A. What page is that? What German page?

Q. I believe it's German page 47. It's the last page of the document. There is a list of six or seven points.

A. Is that Point 3?

Q. I don't know the overall paragraph number. The subparagraph on the list you is subparagraph 3.

THE PRESIDENT: Just a moment. Now, will you report the book number and the German page number and give the defendant an opportunity to define what your intentions are.

MR. LINSKOFF: Surely. It's Document Book Number 84, German page 47.

A. German page 47? It can not be that page. It is Exhibit 1606, is it not, and that only begins on page 47.

THE PRESIDENT: Have you an extra copy of the document in German that you can hand to the defendant and direct his attention to the parts you are inquiring about?

MR. LINSKOFF: Just a moment.

MR. ELTZ: I beg your pardon. I can not follow the proceedings. My headphones do not function.

MR. LINSKOFF: This question raised by Dr. Nolte. The portion I am referring to is not a new portion which is not in evidence. This is

a document in evidence and it's not any part of the one offered yesterday which has a new portion in it.

THE PRESIDENT: All some member of the prosecution staff stop to the witness stand, off the record, and point to the part of the document you are interrogating the defendant about so that he can see it.

MR. KENSKOFF: Perhaps we can save the time of the Tribunal. I can ask another question and go right on.

THE PRESIDENT: Just a moment, now, until we see if the document can be located. If not, we will have to leave the subject and go to something else. Since the prosecution seems unable to direct the attention of the defendant to the exhibit, the Tribunal directs that the matter be passed and that you ask another question.

BY MR. KENSKOFF:

Q. Dr. Haerlein, quite apart from the minutes of the meeting of the 29th, did you receive any other report in January 1942 informing you that Dr. Mugowski was conducting experiments or tests with various vaccines placed at his disposal by Farben?

A. The year 1941 is now seven years back. Throughout those seven years much has happened and to the best of my will I can not remember.

THE PRESIDENT: Mr. Witness, please. That would have been the short answer.

BY MR. KENSKOFF:

Q. Do you recall, Dr. Haerlein, whether you attended conferences or meetings which discussed the fact that Dr. Mugowski was testing or experimenting with various types of vaccines provided by Farben to determine their comparative value?

A. No, not as far as I remember, but I repeat, seven years have passed -- seven difficult war years during which we worked during the day and in the cellar at night, during which I lost a third of my weight and moreover I am sixty-five years old today.

Q. Dr. Haerlein, I show you NI 13590, which we asked be marked

as Prosecution's Exhibit 1866 for identification, which is a report of Dr. Heinrich Neumann wherein it is stated -- it's page 4 of the English-- I think it's the last page of the document before you -- that Krugowski is conducting experiments with vaccines produced by various means which are being put at his disposal by Marburg so as to establish whether there are any differences which speak in favor of one or the other production method, and I ask you whether that refreshes your recollection as to whether you did, in fact, receive a report on the Krugowski experiments.

DR. HELLM: Your Honors, the question is irrelevant with regard to Professor Moorlein. I see no connection with any charge made against Professor Moorlein. Mention is made here in the last paragraph of Krugowski's having carried out experiments with vaccines which came from Marburg. Up to now we have been dealing with the Lomborg Institute. It says in the last paragraph too, something about the Robert Koch Institute. Would you please

request counsel for the prosecution to state how this paragraph can be connected with Professor Hoerlein.

THE PRESIDENT: The matter is not of sufficient importance to warrant any prolonged consideration. The question is simple. The attention of the defendant has been directed to the language of a document and he has been asked whether or not that refreshes his recollection as to whether or not he knew of the matter referred to in the document at the time, to which the obvious answer is that he did or did not or has no recollection. We regard the question as preliminary and we will not undertake to assume what the inquiry is to be. The witness may answer the question if he can, and counsel for the defense will be given an opportunity to make an objection, if anything of a substantive matter, beyond that which is preliminary, is asked the witness. Mr. Witness, you may answer.

DR. HELTZ: Your Honors, I must state again that under these circumstances the defendant must be given an opportunity to look through the entire document. In that case a certain pause must be made in order to afford him that opportunity.

THE PRESIDENT: The Tribunal will handle that situation. It's not necessary to look through the document because he can make an answer from what he has seen as to whether or not that part to which his attention has been directed does or does not refresh his memory now as to whether he knew about it at the time. The witness may answer.

A. Mr. President, I am only referring to third paragraph from the end. I have read the paragraph. I don't remember having read it before. But in its wording I find nothing at all which would only lead you to the slightest trace of suspicion that any criminal act was in question and I don't know why this question is being put to us.

THE PRESIDENT: That is not for us to worry about. The Tribunal will supplement the question in order to get a positive answer. Does that, Mr. Witness, now refresh your recollection to the extent that you can say at the time the document was written, you know about the thing

that was referred to in the document or do you have any memory about it? Can you answer the question? Can you answer it "yes", can you answer it "no" or do you want to say that you can not remember.

A. I do not now remember.

THE PRESIDENT: That answers the question.

BY MR. WINSKOFF:

Q. Dr. Hourloin, I show you now NI 14059 and offer it as Prosecution's Exhibit for identification 1887, which is a meeting of 19 January 1942, and ask you if you recall.

DR. WELTZ: Did you find it?

A. No.

THE PRESIDENT: Dr. Welts, may I call your attention to the fact that the sound system we are using here is fundamentally different from that in Courtroom I. Up there the microphones will pick up and record statements that are made some distance from the instrument, but here I am told you must talk directly into the instrument or what you say is not conveyed on the track. Will you please go to the microphone when you have something to say to the Tribunal so that we may have the benefit of your remarks?

DR. WELTZ: I beg your pardon, Mr. President. I am fully aware of the condition under which we are working today. I was merely asking Mr. Winskoff to show the defendant the document which he had mentioned in order to enable him to receive a personal insight into that document.

MR. WINSKOFF: I think he has it before him now, Dr. Welts.

A. No, I don't have it yet.

THE PRESIDENT: Now, give the defendant an opportunity to look at the document.

A. ---

THE PRESIDENT: Just a moment. For the record I will repeat, and you may correct me if I am in error, you are now asking about Exhibit

1867 of the prosecution which has been marked for identification only, is that correct?

MR. MINSKOFF: That is right. Those will all be offered in evidence. This is preliminary.

THE PRESIDENT: Now, have you directed the attention of the witness to the part of the document about which you are concerned?

MR. MINSKOFF: I merely want to ask the witness whether that document refreshes his recollection as to whether he actually attended the meeting on the 19th at which the report was referred to in the previous document was submitted and discussed and whether it indicates that he himself called that meeting.

THE PRESIDENT: You refer to it as the meeting of the 19th. The document is not before the Tribunal. Can't you give us the date?

MR. MINSKOFF: 19 January 1942.

THE PRESIDENT: Now, Mr. Witness —

A. The document which has just been referred to as has been submitted before as Exhibit 1865. It is now being given a new number, 1867. Is this an error or not?

THE PRESIDENT: Is that the same document that was marked as 1865, Mr. Prosecutor.

MR. MINSKOFF: Yes, there is a report and there is a meeting at which the report was discussed. Now, the actual document which he has before him is the meeting which discussed the report and it happens to annex the report so that he has both contained in the one document.

THE PRESIDENT: Well, that is a circumstance. We are not concerned with, Mr. Defendant, now the question is does that document remind you now as to whether or not you did or did not attend the meeting of the 19th of January 1942. Is that the question, Mr. Prosecutor?

MR. MINSKOFF: That is right.

THE PRESIDENT: You understand the question?

A. I did not attend that conference, but I have already replied

to that question before. I already said that it wasn't even worth my while to go to that meeting to Leverkusen.

THE PRESIDENT: That is an answer. Ask you next question, Mr. Prosecutor.

BY MR. MINSKOFF:

Q. Dr. Hoerlein, on 17 April 1942, Dr. Biber, who presided at the 29 December 1941 meeting, wrote to the Goehring Works stating "The typhus vaccine manufactured by you has proved less effective than the E.G. cultivated vaccine of the Robert Koch Institute. In order to determine whether and under what circumstances you can take over the method of vaccine production introduced by the Robert Koch Institute, my technical adviser will inspect your vaccine production on May 4." Dr. Hoerlein, did you or did you not receive a copy of that letter?

A. No. Would you please show me the document. I only understood half of what you said.

Q. The document is NC 1429. It's in evidence as Prosecution's Exhibit 1632. It appears in Document Book 34. It's on German page 117, and I hand it to the witness now. The question was merely whether he received the letter.

A. One minute.

DR. BELTZ: Would counsel for the prosecution be good enough to point to that portion of the document which the defendant is supposed to have received.

THE PRESIDENT: Well, the answer to that is the prosecutor may not be relying on any particular part of the document. He may be pointing to the document as a whole. That does consume a little time and entitles the defendant to an opportunity to examine the document. The prosecutor can determine for himself whether he is relying on the entire document or only a part of it. Are you ready to answer the question? You may do so.

A. Yes, at that time I heard by the way that Warburg had diffi-

culty in having its validity recognized as being effective. I don't know whether I saw that in writing. I doubt it, but I can't really deny that statement with any amount of certainty because after all it was seven years ago. I can't deny that under my oath, but as far as I know I can say no.

DR. MELTE: Mr. President, I don't understand the answers of my client and I think it is at least necessary that I, as defense counsel, understand what my client is talking about. If I understood correctly, Mr. Minskoff asked whether Professor Hearlein received the letter with which we are concerned. Is that true or is it not?

THE PRESIDENT: Gentlemen, I don't know what we can do in this situation. I don't know what we can do to accommodate Dr. Melte better. If there are any earphones that he can use adjacent to the table that is assigned to counsel for the defense I am sure one of the members will be glad to change places with him. Would you like to try one of these phones on the other side of the room, Dr. Melte?

DR. MELTE: Mr. President, I already have my third place this morning. My question was whether I understood correctly that the question directed to the defendant was, did he receive that letter or does he know of its contents. The reply he gave I did not understand and that is why I ask him to repeat it once more.

MR. MINSKOFF: I think we have had that question answered to my satisfaction.

THE PRESIDENT: The witness may repeat his answer for the benefit of his counsel.

WITNESS: It can repeat it loud enough so that Dr. Nolte can understand without his earphones.

Dr. Nolte, my answer was that this letter was directed to the Bohringwerke in Marburg and that, according to the best of my knowledge, I don't know of it, but that under oath I cannot make that statement because those matters are seven years old, especially if you take into consideration all the difficulties which occurred during these seven years; I cannot remember every single document from all the papers that were submitted to me every single letter which I received. Honestly, I don't believe that I received it.

THE PRESIDENT: Just a moment, please, before you ask another question.

THE WITNESS: Mr. President, may I just make one remark which may facilitate and shorten the proceedings?

THE PRESIDENT: Yes, you may say what you have to say.

THE WITNESS: Mr. President, last night I read through the entire document book 84 from beginning to end. I state here under oath that I did not find one single word in that document book which, even with the greatest amount of scepticism, can lead any one to believe that any inadmissible experiment was contemplated by any expert that Dr. Lautenschlaeger or any other gentlemen in Marburg could have thought that -- and that holds true of all the letters contained in Document Book 84.

THE PRESIDENT: Very well. Prosecutor, ask you next question.

BY MR. MINSKOFF:

Q. Dr. Hoerlein, do you recall whether on May 4th, the contemplated visit to Dr. Bieber and a technical advisor to the Farben Marburg plant did actually take place?

A. No, I don't remember.

Q. Do you recall whether you received a copy of the file memorandum or minutes of a conference which Bieber held at Harburg at that time?

A. Is that a document?

Q. The question was: Do you recall receiving a copy of a file memorandum or minutes of that meeting at Friton's Harburg plant, when Dr. Bieber was present?

THE PRESIDENT: Now, Mr. Witness, the question is: Do you have any memory of having received the document to which the Prosecutor has referred? That is the whole inquiry.

WITNESS: I don't know of any document; no document has been presented to me.

BY MR. MINSKOFF:

Q. Dr. Hoorlein, I show you MI-14037, which we ask be marked as Prosecution Exhibit for Identification 1868, I believe it is. This is a letter from Zahn to the defendant Mann wherein he states that: "Attached are file memoranda --"

THE PRESIDENT: Now, Mr. Prosecutor, you are showing the document to the defendant. It is not necessary to burden the record by stating to us at this state what the document contains. Give him a chance to glance over the document and ask whatever question you have to ask with reference to the document.

What is your question with reference to Document 1868?

Wait, Dr. Nolte, until the question is asked and then, if you have an objection, we will give you an opportunity to state it.

There is nothing before the Tribunal at this time. Go ahead; ask your question.

BY MR. MINSKOFF:

Q. Dr. Hoorlein, do you now recall, having seen that document, as to whether you received a copy of it at the time?

THE PRESIDENT: Now, just a moment. Dr. Nolte, if you want to make an objection to that question, you may state it to the Tribunal... if you will go to the microphone.

DR. NOLTE: Mr. President, I wanted to ask counsel for the Prosecution to hand this document to you, the Tribunal, so that you may decide whether this question is relevant or not.

THE PRESIDENT: Well, the question is so preliminary. The Tribunal is not concerned with material in the document. The witness has the document in his hands. He is asked now the simple question as to whether it reminds him that he did or did not receive a copy of it at the time.

He may answer that question.

WITNESS: We are concerned with a letter written by Zahn --

THE PRESIDENT: The letter is not before us. We are not concerned with its contents. Do you now remember, Mr. Defendant, whether or not at the time you received a copy of that document?

WITNESS: No, I don't remember.

THE PRESIDENT: That is an answer.

MR. MINSKOFF: No further questions.

THE PRESIDENT: Does that conclude the cross-examination of the witness?

MR. MINSKOFF: Yes, your Honor.

THE PRESIDENT: What is your disposition with respect to these several documents that you have marked for identification? Are you offering them in evidence?

MR. MINSKOFF: We ask that they all be offered in evidence.

THE PRESIDENT: Now, state the numbers for the record so that we keep our record straight.

The last one was 1868. What was the first one?

MR. SPEECHER: Eighteen-sixty-five, Mr. President. 1865, '66, '67, and 1868.

THE PRESIDENT: Then the documents identified as 1865 to 1868

inclusive are now introduced in evidence by the Prosecution, and the Tribunal understands that the cross-examination of the witness is concluded.

MR. MINSKOFF: Mr. President, in a few moments we could get you also the numbers of the exhibits identified yesterday which all are also to be put into evidence in the Prosecution documents.

THE PRESIDENT: We had better do that before the redirect examination.

MR. SPRENGER: Mr. President, I stated at the time I was cross-examining yesterday that Exhibits 1860 and 1861 would be put in evidence. And thereafter Mr. Minskoff identified Exhibits 1862, 1863, and 1864. That was yesterday afternoon.

THE PRESIDENT: Then, at the risk of repetition, our understanding is that the document marked Exhibits 1860 to 1868 inclusive have been introduced in evidence by the Prosecution.

WITNESS: Mr. President, may I draw your attention to the fact that 1867 was identical with 1865?

THE PRESIDENT: That will do no harm. It is a duplication.

Now, Dr. Nelte, certainly this Tribunal does not feel disposed to lecture you before you have committed any offense, but we do think it proper to call your attention to the fact that this redirect examination should be limited and restricted to its own proper, narrow field. There have been documents submitted to this defendant for the purpose of refreshing his recollection, and with respect to which he says he has no memory of the matters referred to. That is a complete answer to the inquiry. It produced nothing so far as the Prosecution's inquiry is concerned. It ought not to be the excuse for examining the defendant further with respect to those matters.

WITNESS: I couldn't understand one word.

THE PRESIDENT: Dr. Nelte, did you understand what I said?

DR. NELTE: I have understood you, Mr. President.

THE PRESIDENT: For the record I will re-state that I was

admonishing the able counsel for the Defense to keep the redirect examination to its proper field, which I am not only hopeful but feel quite confident that he will do. And you may proceed, Dr. Helto, with your redirect examination.

REDIRECT EXAMINATION

HEINRICH HOERLEIN, Resumed

BY DR. HALTE:

Q. The Prosecution attached importance to the fact that you were a member of the Central Committee (Zentralausschuss) without, however, going into those facts in detail in the cross examination. In that connection I will merely confine myself to asking you: Do you know the basic information of the Prosecution?

A. Yes.

Q. There, on page 16, it is stated: "After the defendant Schmitz succeeded Dr. Karl Bosch as the chairman of the Vorstand in the year 1935, the Central Committee lost much of its position as an executive committee. After that period of time the Central Committee predominantly dealt with matters of personnel, in particular dealt with the appointment of employees to Prokurists and other high positions."

Is this statement by the Prosecution with respect to the importance of membership in the Central Committee correct?

A. Yes.

Q. Mr. Minakoff has talked to you about a number of conferences, about the Scientific Central conferences, about the Scientific Pharmaceutical conferences, about the Saturday conferences at Elberfeld, etc. In that connection I only have one question. Would you please be good enough to tell me how many persons participated in all these scientific conferences? Can you tell me?

A. Ten or twelve.

Q. How about the Main conference?

A. That varied at different times. The directors participated in that conference.

Q. I only want the number.

A. It varied at different periods. At the end, nine Leverkusen directors were represented, three Elberfeld directors, and three Hoechst directors.

Q. And how about the Saturday conferences?

A. In the Saturday conferences, in addition to the department, there were about eleven people, including the departmental leaders.

Q. And how about the outside branches representatives?

A. Well, that was a very large circle; scientific representatives were sent from eleven German offices.

Q. Very well. Now this question, was the total number something like fifty to one hundred comprising all these conferences?

A. Much less.

Q. Less?

A. Yes.

Q. The Prosecution wants to prove your knowledge of criminal experiments when submitting all these reports. I am now asking you whether, among the witnesses and affiants which the Prosecution has used for that purpose, there can be found one who confirmed such a fact?

THE PRESIDENT: That will be a question for the Tribunal to determine. It does not call for the statement of a defendant or the opinion of an expert.

DR. MELTE: Mr. President, it could well be possible that I do not know the names and personalities of these various professors and affiants, but Prof. Moerlein is well aware of their names. It may have escaped me that a participant in these conferences has appeared here as a witness.

THE PRESIDENT: If your question is whether or not any of the persons who participated in these conferences appeared here as a witness, your inquiry would be correct. But as to what the witnesses established by their testimony here is one of the burdens that is in the lap of the Tribunal.

DR. MELTE: Yes, I only wanted to recommend this question to the attention of the Tribunal.

BY DR. MELTE:

Q. With respect to the Lomborg complex, I want to ask you the following question. Do you think the establishment of that institute during the war was illegal?

A. I think that it was a question of honor on the part of the I.G. to do everything possible to combat typhus wherever it occurred.

Q. Is it correct that the establishment of the Lomborg Typhus Institute was carried out on the basis of a Government order?

A. The Government and the Wehrmacht desired that.

Q. They requested it?

A. They requested it, yes.

Q. I am referring you to NO-1315, Exhibit 469. This is the Dieter conference mentioned in Volume 84, page 45 of the German record. It is mentioned therein that in the Government General in Lomborg a new production plant is to be created; and on the last page of this record it is stated once more that the Behringwerke, on the 6th of January, 1942, are sending a representative to the Government General in order to start with the preliminary work for the production of typhus vaccine.

You will find vaccine mentioned in the file note, NI-1358, which was not submitted by the Prosecution, on page 5, under Figure 5.

I quote: "Behringwerke are receiving from the government of the Government General the order to erect in Lomborg as quickly as possible a private, economic institute for the production of typhus vaccine."

My question is: Did you have anything to do with the management of that institute?

A. No.

Q. Was there a supervisory organization above this institute?

A. Marburg had the supervision.

Q. Did Lomborg, for any other organization reasons belong to your sphere of business?

A. No.

Q. Did you receive from the management of Lomborg Institute a

a report about what was going on in Lemberg?

A. No; with the exception of those matters which the gentlemen told us on the occasion of their visit to Lemberg, and that of course, was very little.

Q. I am merely referring to official reports.

A. No, no official reports.

Q. Of course that you, privately, on various occasions, learned something about these matters is naturally a matter of course. After all, you were not living on an island.

One final question I want to put to you, as a consequence of what Mr. Minskoff said yesterday with regard to Document Zahn NI-12181.

A. Exhibit?

Q. It is NI-12181, Document Book 84, page 51.

THE PRESIDENT: Can you give us the exhibit number, Doctor?

DR. NELTE: Exhibit No. 1606.

Did you find that?

WITNESS: Yes.

DR. NELTE: Mr. President, this is the very same document which was submitted yesterday by the Prosecution in supplementation.

BY DR. NELTE:

Q. On page 2-4, according to my book, it is stated, and I quote: "Prof. Kudicke reports that during the months October and November he received three thousand dosages of vaccine from Bering Plant and that he used these on persons who were in great danger without, so far, having registered any failures."

When the question was put to you whether you knew of that, you said you didn't know, but you said that these people mentioned there who were in that great danger were probably persons who, as a result of their profession, had to get into contact with typhus.

A. Certainly; this is exactly the same thing as was the case in Elberfeld, when we asked for that vaccine in order to protect our

personnel in the chemo-therapeutical laboratories.

Q. But that was merely an assumption on your part, was it not?

And not I ask you to look at Document NI-12183.

Your Honor, this is Exhibit 1607 and it is a file note of Dr. Demnitz. On page 54 of the German Document Book you will find this report on the conference of the 29th of December, 1941. And you will find the following sentence: "Ever since two months ago this vaccine, at least the three thousand dosages, were distributed to physicians, to factory, institutes, to nursing personnel, etc. who had been vaccinated with it, and in spite of the exposition of these persons involved, no failure up to date has been registered."

That confirms what you said; but what the Prosecution also had to know when they submitted their documents because it is their document.

Your Honor, I have no further questions.

DR. SILCHER: (Counsel for defendant von Knieriem);

BY DR. SILCHER:

Q. Prof. Herlein, you were speaking yesterday about the changes of the French legislature in the pharmaceutical field by the Vichy Government, and you furthermore stated that this change was one of the few which was retained by the French Government after the collapse.

I have found that your reply could not be quite understood. Would you please repeat it?

A. Yes, I stated that the last reports which I received from Paris prove that this new patent law is one of the very few Vichy laws which were retained by the new government, and that I must conclude therefrom that that complies with the generally recognized needs in France.

MR. SPEECHER: Mr. President, that was exactly the answer that came through before, and it seems to me that it would be quite proper to suggest, rather than having any reflection upon anybody here, that counsel compare the German with the English and then submit proper motions.

rather than to make such statements here.

I only registered this because it has been done repeatedly and repeatedly, and the alleged errors have not been errors.

THE PRESIDENT: It would be better practice, if counsel undertakes to abuse what the opposition thinks is a privilege, that it would be called to the attention of the Tribunal before it was done. We can take nothing out of the sound track, and we shall have to pass the matter because there is no timely objection that afforded the Tribunal an opportunity to pass on the Prosecution's observation.

There is nothing before the Tribunal.

Is there to be any further examination of this defendant by counsel for the Defense or the Prosecution?

Since none has been requested, the Tribunal now excuses the defendant from the witness box and he may, at the end of the recess, take his place at the dock.

The Tribunal will at this time take its morning recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Chair would like to state for the record that counsel for the defendant Schneider has requested that he be excused from attendance of the sessions at next Monday and Tuesday in order to work on his document books, and that request is now granted by the Tribunal.

DR. NELTE: Mr. President, to conclude the case of the defendant Hoerlein, I should like to call as the last witness Dr. Luecker.

THE PRESIDENT: The Marshal will bring in the witness.

OTTO LUECKER, a witness, took the stand and testified as follows:

BY THE PRESIDENT:

The witness will remain standing for the purpose of being sworn, raise his right hand, say "I", and state his name.

THE WITNESS: Otto Luecker.

THE PRESIDENT: And now repeat after me the oath:

I swear by God, the Almighty and the Omniscient, I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

THE PRESIDENT: The witness may be seated. The witness is with counsel for the defendant Hoerlein.

DIRECT EXAMINATION

BY DR. NELTE:

Q. Dr. Luecker, when and where were you born?

A. 14th of June, 1900, in Homberg near Rothungen near Duesseldorf.

Q. Since when were you employed by I. G. Farben?

A. Since the 1st of October, 1930.

Q. What positions did you hold there?

A. In the beginning, I worked in the Scientific Department I; from 1935 on, I was head of that department.

Q. Mr. President, I shall show the witness the chart about the organization of the sales combine in which he worked. This is Hoerlein Document 86 which I offer as Exhibit 103. I shall give a copy to the

THE MARSHAL: The Tribunal is again in session.

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THE PRESIDENT: The Marshal will bring in the witness.

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The witness will remain standing for the purpose of being sworn, raise his right hand, say "I", and state his name.

THE WITNESS: Otto Luecker.

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(The witness repeated the oath.)

THE PRESIDENT: The witness may be seated. The witness is with counsel for the defendant Hoerlein.

DIRECT EXAMINATION

BY DR. NEITE:

Q. Dr. Luecker, when and where were you born?

A. 14th of June, 1900, in Hamborg near Rathingen near Duesseldorf.

Q. Since when were you employed by I. G. Farben?

A. Since the 1st of October, 1930.

Q. What positions did you hold there?

A. In the beginning, I worked in the Scientific Department I; from 1935 on, I was head of that department.

Q. Mr. President, I shall show the witness the chart about the organization of the sales combine in which he worked. This is Hoerlein Document 86 which I offer as Exhibit 103. I shall give a copy to the

witness. It is in Book III, page 9-4.

Witness, is the organization of the ad as combine of which the Scientific Department I and II was also an organizational part, correctly shown on this chart?

A. Yes. I received this chart at the time from Mr. Mann too.

Q. How many sub-departments did the so-called Scientific Department have?

A. Six.

Q. Under whom were these six sub-departments?

A. Under Dr. Mertens as this chart indicates.

Q. You must speak more slowly as the interpreters can keep up.

What was the duties of Department I-I which was under you, according to the chart?

A. Its duties were primarily to introduce and supervise the clinical tests of new products, to collect clinical experience and evaluate them. The ultimate aim was to get a comprehensive picture of the therapeutic effect of such new preparations. If the preparation was put on the market, then we had to check the effect of the preparation with the aid of continual reports through the next years and we had to see whether any more advantageous application could be found or whether any new use of the preparation could be developed.

Q. Witness, that is sufficient for this part of the examination. Where did you receive the preparation?

A. We received them from Hoechst or Elberfeld.

Q. Did the Scientific Department also test sera and vaccines?

A. No.

Q. Will you please briefly tell the Tribunal about the customary procedure as it was in actual fact after the Elberfeld plant had developed a drug and had submitted this preparation for clinical test?

A. We received the expose from Elberfeld with the request in the accompanying letter the the preparation be submitted to Prof.

Kikuth for a clinical test on the basis of the expose.

Q. Who drew up these exposes which came from Elberfeld?

A. The various heads of the Elberfeld research institutes: Professor Weiss, Professor Kikuth, Professor Demagk. Aside from that position at Elberfeld, these gentlemen were simultaneously university professors.

Q. Witness, the Tribunal is adequately informed about the personal data of these three gentlemen. You need not go into that subject.

I now ask you who is responsible for the contents of these exposes which you received?

A. The person responsible for the contents is the person who carried out the animal experiments and tests.

Q. And who was this for the Elberfeld preparations?

A. I did not understand.

Q. Who was it for the Elberfeld preparations?

A. What?

Q. Who was responsible for the Elberfeld preparations?

A. The three men I have just mentioned.

Q. Not Professor Hoorlein?

A. The top responsibility was Professor Hoorlein's.

Q. Do you believe that Prof. Hoerlein could rely on the work of his associates?

A. In my opinion and it was the general opinion that he could, for he had carefully selected the men to head the institutes.

THE PRESIDENT: Mr. Witness, you have answered the question.

Q. Now, tell me, these exposes which you passed on to the doctors how were they composed at Silberfeld?

A. They had to contain everything that a doctor had to know in order to administer the drugs and the preparations without danger for the patient as far as that was humanly possible.

Q. What did the scientific department do when they received the exposes? I believe you can speak a little faster now.

A. We checked the exposes and sometimes we eliminated possible misunderstanding or changed the wording. Of course, we made no material changes.

Q. Witness, did you, in your scientific department ever have any lack of suitable persons to make these chemical tests?

A. No, never. More people applied, more than we could use, by virtue of the material at our disposal.

Q. Did you ever employ any SS doctors for these clinical tests?

A. No. I know Dr. Vetter. The connection with Dr. Vetter resulted from the fact that he had formerly worked with us.

Q. Witness, what a clinical test of a therapeutical drug is has already been explained to the Tribunal. I now ask you, you said that the detailed reports of the tests were worked on by you?

THE PRESIDENT: Mr. Nelte, it will be necessary to suspend because of the lack of current which seems to be off. We will wait just a moment and see whether we have any relief. Dr. Nelte, there seems to be some mechanical difficulties here with which we cannot cope. The Tribunal is going to recess until the Marshal can go to our own courtroom and ascertain definitely whether the room will be available to us at 1:30.

In the meantime the Tribunal will be in recess until he returns and we will bring you in then and make the announcements as to the availability of our room. We will not undertake to function further in these quarters if our room will be open to us at 1:30. The Tribunal is now in recess.

(A recess was taken until the return of the Marshal)

THE PRESIDENT: The Marshal advises us that according to his information the Courtroom will be available at 1:30 this afternoon. We take it there will be no serious objection to returning to our own Court. The Tribunal regrets the necessity of recessing at this time. We shall rise until 1:30 and convene in Courtroom I, our regular courtroom.

(A recess was taken until 1330 hours)

AFTERNOON SESSION

The hearing reconvened 1330 hours.

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Mr. Marshal, in view of the absences that were excused this morning, perhaps you had better report on the attendance again.

THE MARSHAL: May it please Your Honors, defendants Buerger, Krauch, Schmitz, Macfliger, Ilgner, and Lautenschlaeger are absent from the courtroom.

THE PRESIDENT: The defendants named by the Marshal will be shown to have been excused from attendance at this afternoon's session on their own applications. You may continue, Dr. Helte. You may proceed.

DIRECT EXAMINATION (Cont'd).

DR. OTTO LUCKER (resumes stand)

BY DR. HELTE:

Q. Dr. Lucker, this morning when we recessed you replied to the question as to how the incoming reports of the testers of new drugs were dealt with by you in the scientific department and how they were transferred to Elberfeld whenever you were concerned with Elberfeld preparations, and how they were transferred to Hoechst whenever you were concerned with Hoechst preparations, is that right?

A. The laboratories at Elberfeld also received the reports with respect to the Hoechst preparations and vice versa.

Q. Was the scientific department, in their choice of the clinical testers, independent?

A. Yes.

Q. With respect to the scientific department 1 and 2, Professor Herlein has testified on the witness stand that these two departments from an organizational point of view, belonged to the sales combine,

but that as far as the execution of the clinical testing was concerned, the head of the sales combine, Dr. Lant, had no responsibility, being a business man himself. Is that correct?

A. Yes, that is my opinion too.

Q. Furthermore, Professor Herlein stated, and I am putting that to you, was that Dr. Mertens, as head of the scientific department 1 and 2, was in charge of the clinical testing in his capacity as physician, but that for the conscientious execution of such clinical testing he was responsible to Professor Herlein as far as Elberfeld products were concerned. I am not quite finished. Furthermore, Professor Lautenschlaeger was responsible in the case of Hoechst products.

THE COURT: May it please the Court, the prosecution objects to the form of the question as being leading to their own witness, let him answer yes or no rather than try to give his own information of what he believes those positions were.

THE PROSECUTOR: Your questions, I think, Dr. Helte, are open to the criticism of the prosecution. They are highly leading. The objection must be sustained.

BY DR. HELTE:

Q. I merely wanted to shorten the examination. I am now going to turn to another question. Would you please explain what the relationship was between Dr. Mertens and the clinical examination of the new drugs? You know, of course, with what question we are here concerned.

A. Dr. Mertens was responsible to Professor Herlein for the Elberfeld products and to Professor Lautenschlaeger for the Hoechst products. He was responsible for the proper clinical testing of the preparations concerned.

Q. That will suffice. In this connection, would you be good

enough to explain, especially since the prosecution has talked of guiding principles in their cross-examination, whether there certain guiding principles which were established by Professor Hoerlein and which influenced your activity and guided your activity in the scientific department.

A. There were no such guiding directives, but let me clarify the following. Twice a year we had a conference of the branch representatives when the states of the clinical testing of all preparations were discussed which went through Department 1 and Department 2. During this conference of the branch representatives it was decided whenever one could consider the testing of a preparation as having been concluded and the preparation was ready for sale or whether testing was to be continued on a broader basis or whether the testing as it was satisfactory.

Q. Who was in charge of this conference of these branch representatives?

A. There were two conferences — one of Elberfeld products, of which Professor Hoerlein was in charge, and the other for Hoechst, of which Professor Lautenschlaeger was in charge.

Q. Did Professor Hoerlein visit the offices of the scientific department at Leverkusen?

A. No, I never experienced that.

Q. Did you know Dr. Vetter?

A. Yes.

Q. Was he subordinated to Professor Hoerlein?

A. No.

Q. To whom was he subordinated?

A. He was an associate in my department.

Q. And since you were the head —

A. He was my subordinate.

Q. I see. Did you know that Dr. Vetter was a member of the SS?

A. Yes.

Q. Were you a member of the Party?

A. Yes, since the Fall of 1941.

Q. Were you denazified?

A. Yes, I have been categorized under Group 5.

Q. In other words you are exonerated.

A. Yes.

Q. What was your work relations to Dr. Vetter?

A. Very favorable. Dr. Vetter was an ambitious and competent associate of mine who had a good medical knowledge and who specially concerned himself with hormones and organic preparations.

Q. What was his character?

A. In the course of three years and a half of his work we never had occasion to complain about his character. He was a good comrade to work with.

Q. When was Dr. Vetter drafted for military service?

A. In May 1941.

Q. You were Dr. Vetter's superior, were you not? After his being drafted into the Waffen SS were you still in a position to give him orders or directives in the framework of his activity?

A. No. Once he was drafted into the Wehrmacht our work relationship ceased, and no previous employees could be called upon to do any work.

Q. Can you tell me anything about Dr. Vetter's salary after his being drafted?

A. This was settled in the I. G. in a standardized way for all employees. Actually this was a matter for the personnel department and I can tell you nothing in detail about it.

DR. HENSE: Your Honors, in this connection I am submitting

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Document No. 111 as Exhibit 104. It is an affidavit, and you will find it in Document Book 5, page 56. I think it is the last document in the book.

This document is identical with the document known No. 110 which I have taken over from the Defense counsel on behalf of that defendant. In this document the salary of Dr. Vetter is listed during the time he was drafted into the army, and it is expressed there that he was subject to the same salary settlement as every other employee of I.G. Farben.

An affidavit has been submitted here in which it was stated that Dr. Vetter received premiums from the I.G. in payment of positive results of his tests. I want you to reply to the question of whether Dr. Vetter at any time received a bonus for his activity during the time he was drafted into the army.

A. As far as I know, he did not, but the personnel department would be able to give you more detailed information on that.

MR. HENKOFF: There is no objection, if Your Honors please, to the answer of the witness as to what he knew, but the statement contained in the question, the statement of fact, is completely erroneous. There is no affidavit on the part of the Prosecution which indicates directly or indirectly that it is the contention of the Prosecution that Vetter was paid a premium or paid any special sums for his experiments.

I think the question should just elicit facts and should not testify incorrectly.

THE PRESIDENT: Be that as it may, it is not a proper statement and will be regarded by the Tribunal as having been stricken from the record. The interrogation and the answer, however, will stand.

MR. HENKOFF (Counsel for defendant Hoeslein): Your Honor, would you please look at Prosecution Exhibit 1717, HI-11690, in Document Book 67, Exhibit 1717?

MR. PRESIDENT: Mr. President, the Prosecution does not believe that whether or not we were correct as to whether or not there was such an affidavit.

I will repeat, since Dr. Helte didn't have on his earphones. The Prosecution does not believe that the question of whether or not such a statement was made by the Prosecution is any proper part of this interrogation, and if Dr. Helte would not repeat the practice of asking questions with these statements concerning what the Prosecution has done, we could get along without any objections in this connection.

THE PRESIDENT: Now, the position of the Tribunal, I think, is this. We do not desire to lay down any iron-clad rule that a counsel for either side may direct the attention of a witness or the Tribunal what it assumes to be in evidence as preliminary to a question. That, however, should not be used to the extent of leading the witness, nor should it be done with the assumption that, by asserting it, counsel is thereby conveying an impression of his appraisal of a document with respect to which his opponent may have some controversy. That practice is not good, and insofar as you can, counsel, you should refrain from assuming what has been established by the evidence because it only invites a controversy from the other side.

In those instances where that does occur, we will delete it as surplusage anyway, and counsel does not need to be too solicitous about making objections of that kind. We can understand the difference between a voluntary statement of counsel and a proper question. It shouldn't be done, of course, to the extent of becoming a problem here, but, within reasonable limitations, there may be some excuse for suggesting the subject matter to the witness, counsel wishes to question the witness about. But that will not be construed as part of the evidence in the case.

DR. HELTE: Mr. President, I thank you very much for your instructions. I only stated that the observation made by the Prosecution to the effect that it did not make that assertion is contradictory to the actual presentation of the Prosecution. If they submit affidavits in which statements are contained, then they are making those charges.

I can well understand that it is referred to the Prosecution if again and again I am in a position to say that assertions made in affidavits are actually incorrect. However, I consider it my duty to point out such matters.

THE PRESIDENT: Now, gentlemen, we have already devoted more time to this controversy than it deserves. You gentlemen know the rules that the Tribunal tries to follow, and it will not be necessary to discuss this incident any further.

Proceed with the trial.

DR. WILTZ: I am now turning to a very similar question, and I am in doubt. I am referring to the affidavit of Tondos, NI-12452, Exhibit 1715 of the Prosecution, to be found in Book 87, page 63 of the English. It is stated therein that Dr. Vetter was known since before the war he was in Poland as a representative of Bayer, and that he had traveled there as an agent for Bayer products.

Mr. President, will you please decide whether I am allowed to put that question to the witness?

THE PRESIDENT: Counsel, we have not said that you may not call attention to what is in evidence as a basis for a question. If you direct the attention of the Tribunal to it, that is entirely proper. Then we understand what you are trying to do. What we were saying was that you should not undertake to draw your inferences as to what has been established from some document that counsel for the Prosecution may say does not establish that thing. As long as you are doing just what you did, it is entirely proper to direct the attention to a document and to state what the document says, as a basis for your questions to the witness.

We have no objection to that whatever. We do have objections to you drawing inferences as to what has or has not been established by argument in due time in the trial of this case.

BY DR. WILTZ:

Q. How did the relationship between Dr. Vetter and the Scientific Department come about after Dr. Vetter had been drafted into the Wehrmacht?

A. Dr. Vetter at first was trained as a soldier. This training period was relatively brief, his being a physician, and in August, 1941, Dr. Vetter wrote a letter from Dachau to the members of my department.

DR. WITTE: Mr. President, this is Document III-9402, Exhibit 1692, Book 67, page 7 of the German and English copies.

Did you submit this letter that you received to Dr. Hartens?

WITNESS: No, it was a personal letter directed to all the members of my department, which I circulated and which was initialed by everyone who read it. The initials of Dr. Hartens is not found on the letter.

BY DR. WITTE:

Q. Who caused the sending of these preparations to Dr. Vetter at Dachau?

A. I did that.

Q. Could you do that without a directive being issued by Dr. Hartens?

A. The heads of Department One and Department Two had authority to send preparations to physicians.

Q. In the case of these preparations, are we concerned with such still in the stage of clinical testing?

A. No. All preparations which were mentioned in our reply dated the 23rd of August, 1941, were the same preparations which could be brought at any time in the free market. However, they were not at the disposal of Dr. Vetter in his sphere of work because these preparations had only been circulated since the spring of 1941.

Q. In that case, how can it be explained that in this correspondence from Dr. Vetter's side as well as from your side words are mentioned which could bring about the impression that we are here

concerned with experiments (versuche) which Dr. Vetter was carrying on in Dresden?

A. Let me, first of all, point out that the word "Versuch" — experiment — has several meanings in the German language. I would like to try to explain that the "Versuch" — or attempt — of a physician in his efforts to help a patient has nothing at all to do with "Versuch" in the sense of an experiment. If, in the correspondence with a physician, we speak of a so-called "Versuch" we are speaking of an attempt to cure. In other words, we always have the intention to cure, that is, what we mean by the word "Versuch" in German.

The proper English translation of this word is "trial". These "Versuche" are not experiments, and that is why I think that the word "experiment" is not properly chosen.

Q. Dr. Luecker, in this special case Dr. Vetter had been asked to carry out comparative experiments vergleichs versuche between sulfapyridin and sulfathiazol. Is that true?

A. Yes.

Q. And what can you say about that?

A. The following explanation must be given. Both preparations at that time had become proven therapeutics for pneumonia, and it was of scientific interest to find out which of the two preparations was better. At that time a large number of German physicians and surgeons dealt with that question. In view of Dr. Vetter's scientific interest, we considered it to be proper to submit that problem to him too.

Q. That were the reasons which moved you in your deliveries to Dr. Vetter, briefly?

A. For us it was a matter of course that we would assist a physician of our firm in order to enable him to assist his patients and cure his patients, and that we would put at his disposal our most modern therapeutical facilities.

Q. That will suffice. Let me call this period "The Dachau Period", from August until December 1941. These letters from that period have the following document — and exhibit numbers. In addition to the Exhibit 1692, which was already mentioned, we have the following documents:

NI-9823, Exh. 1693, Volume 67, page 9 in the German and page 8 in the English.

NI-9403, Exh. 1694, Book 67, page 11 in the German and page 10 in the English.

NI-9404, Exh. 1695, Book 67, page 15 in the German and page 13 in the English.

NI-9412, Exh. 1708, Book 67, page 48 in the German and page 41 in the English.

NI-9413, Exh. 1709, Book 67, page 49 in the German and page 42 in the English.

NI-9415, Exh. 1710, Book 67, page 63 in the German and page 50 in the English.

Do you know these documents which I submitted to you?

A. Yes.

Q. And do you know with what documents we are concerned?

A. Yes.

Q. My question is, did Prof. Hoerlein know of these letters which after all were personal letters, or did he not?

A. No.

Q. Did you conclude from the first letter that Dr. Vetter, who was at Dachau was the physician for the prisoners in the concentration camp?

A. That Dr. Vetter was active in a concentration camp we did actually conclude, but we could not conclude that he was active in the capacity of a physician treating his troops. We had no thoughts or imaginations as to the size of the unit he was with.

Q. Would you have refused to send him the preparations which you sent him had you known that he was treating inmates?

A. No, I would have sent them, without any advisings whatever. We would not have considered it tenable to deprive inmates of these preparations which, after all, had a world reputation. In this connection, let me point out that in the Rastatt Concentration Camp trial, as SS physician, Dr. Dickmann, an acquaintance of my brother-in-law's, among others, was convicted because he refused to give drugs to sick inmates although he had a large store available.

MR. SPRECHER: I move that the last remark go out. It is not responsive and irrelevant, indirect. Brother-in-law, courts...

WITNESS: It was in the newspapers.

THE PRESIDENT: The motion will be overruled and the Tribunal will consider the evidence for what it thinks it is worth.

BY DR. NELTE:

Q. Dr. Luecker, there is no need for you to excuse yourself for having sent valuable drugs into a concentration camp, but I would like to ask you: When did you assume for the first time that Dr. Vetter, who plays a considerable role in this trial behind the scenes, actually treated concentration camp inmates?

A. In December 1943, that is when Vetter gave us an oral report about his application of "3582" in case of tuberculosis.

Q. Have you got that report with you?

A. Yes.

Q. What became apparent from this report?

A. It became apparent from the report that Dr. Vetter successfully applied the preparation "3582" in the case of tuberculosis.

Q. You were mentioning a conference which Dr. Vetter attended. Did he state that he carried out these therapeutical experiments or tests on concentration camp inmates?

A. No.

Q. What did you conclude from the report he made?

A. We found the surprising result that preparation "3582" had favorable results if applied in the case of tuberculosis. We were particularly impressed with that since reliable chemo-therapeutical means are not in existence for tuberculosis, and the therapy of this dangerous disease was, and still is today, a problem.

Q. Can you hand me that report so I may submit it to the Tribunal? You designate this report, which is a file note of 13 December, 1943, as a particularly favorable report because it communicated to you that the treatment, which Dr. Vetter applied on certain people suffering from tuberculosis, was very successful.

My question is, why did you assume that in the cases of persons who were treated there with concentration camp inmates?

A. On a chart which Dr. Vetter had with him, on the occasion of this conference, the weight of the persons involved had been recorded, and those figures led us to conclude that we were not here concerned with members of the Army but with inmates of a concentration camp.

Q. Why?

A. Because people suffering from tuberculosis who are in a generally wasted condition are usually sent to sanatoriums by their unit.

Q. In other words, it was a conclusion which was quite apparent?

A. Yes.

Q. But Dr. Vetter himself did not say so, did he?

A. No, he didn't express himself clearly on that.

Q. Now, after you had gained an inner conviction about this matter, did you have any misgivings to send such preparations to Vetter?

A. No.

Q. May I ask, were you happy about being able to send him such preparations after that result?

A. We were of the opinion that we had no reason whatsoever to deprive him of this preparation, and the inmates seemed to have been very satisfied with this treatment because one of these inmates, by the name of Rickenberg, after the war, either at the end of 1945 or the beginning of 1946, sent us a letter wherein he pointed out that in the concentration camp of Mauthausen he was treated with the preparation 3582, by Dr. Vetter, and that this preparation had been extremely successful. He asked us in the letter to send him this preparation once more.

DR. KATZ: Your Honor, this letter will be submitted into evidence in its original by the Defense counsel on behalf of the defendant Lautenschlager.

Q. Now will you be good enough to tell me whether the name of Auschwitz where Dr. Vetter was transferred, gave you any misgivings?

A. No.

Q. What was your conception of a camp physician?

A. A physician has to treat his patients no matter where it is. Moreover, it became apparent from the address, that Dr. Vetter was active in the SS hospital. We had to conclude from that, that he was treating members of the army.

Q. I asked what your conception of a camp physician was, - what I wanted to ask you was, what was the activity of a camp physician? Did you think that a camp physician in a concentration camp would act differently there than he would act if he was employed at some other clinic or some hospital.

A. My conception of a physician is indivisible. A physician exercises his activity irrespective of the person he treats.

Q. I now am passing on to a final chapter, a chapter which up to this point has only been indirectly mentioned by the Prosecution. Do you know Dr. von Engelhardt?

A. Yes.

Q. The name was mentioned yesterday during cross-examination of Professor Hoerlein. Did Dr. Engelhardt belong to the same scientific department to which you belonged?

A. No.

Q. To what department did he belong?

A. He was the scientific associate in the Department Behringwerke.

Q. Didn't this department belong to the scientific department?

A. No. This department only had to deal with Sera, Vaccines and veterinary products, with the testing of which the scientific department did not deal.

Q. Was there a collaboration between this scientific department and the Department of Behring?

A. In that connection I must add that Dr. von Engelhardt always attended the discussions of the scientific department which were held occasionally.

Q. What was the purpose of these scientific conferences?

A. The most important general questions which arose within the scientific departments were discussed there; at the same time these conferences afforded all participants a picture of the most important events within all departments.

This was necessary in order to assure the necessary cooperation between all departments concerned.

Q. What was Dr. Engelhardt's tasks in that connection?

A. The reason why Dr. Engelhardt was asked to attend such conferences, in my opinion, was to have him also informed about the most important events within the scientific department. That was necessary because sera are very often applied in connection with chemotherapeutical preparations.

Q. Did Dr. von Engelhardt report on internal events within his own department?

A. Dr. von Engelhardt was in the habit of reporting on important

scientific events in the Department Schringensko.

Q. I was asking whether he was reporting on internal, individual incidents, or whether he was reporting upon general important sero-bacteriological questions.

A. Yes, he was reporting on important incidents which came up in the Department. For instance, he would discuss the testing of a vaccine or a serum, or the testing of any other preparations of this Department.

Q. That is very interesting. You said, "testing". Did he report about what happened during the actual testing, or did he report about the theory of such preparations; did he speak on the general questions of testing vaccines?

A. No, he occasionally spoke on the fact that a certain preparation of a certain serum was clinically tested, and that the result, as it was known at the time, was such and such.

Q. Did he ever report that sera were being tested in concentration camps?

A. No, I know nothing of that.

Q. Did you at any time learn that in concentration camps, medical experiments were carried out on inmates?

A. No, I only heard of that after the capitulation in connection with the Nurnberg trial.

Q. Were the scientific conferences in the Scientific Department of an internal nature?

A. Yes, they were purely of an internal nature.

Q. Did a representative of Elberfeld at any time participate in such conferences?

A. No.

Q. Did Professor Haeberlein have anything whatsoever to do with such conferences?

A. No.

Q. In that case I have no further questions to this witness, the examination of whom I have limited to a great extent because I am

submitting his affidavits that is.

Document, Harlein 85, Exhibit 103, - I beg your pardon, - Exhibit 105, you will find this document in Book 3, on page 75. Then the Affidavit of Luecker, Harlein Document 76, which I am submitting as exhibit 106, you will find that Document in Book 3, page 88. Your Honor, the document I am holding in my hand is the file note which was mentioned by the witness during his examination.

May I hand it as an annex to his examination, or must I give it an exhibit number?

THE PRESIDENT: Unless you give it an exhibit number and give us a translation, it will not be of very much use to us, Doctor. I suspect that would be the better practice. You can indicate now that you will give it an exhibit number, but perhaps it would be less confusing if you would reserve assigning it a number until you have had it processed, and then bring it in and offer it as an exhibited document, and give it a number, and make it an exhibit.

DR. HELTZ: I am offering this document as Harlein 114.

THE PRESIDENT: That is the Document number, I take it.

DR. HELTZ: Yes, that is Document No. 114. So far I have submitted 113 documents; that will be the 114th.

THE PRESIDENT: That will go in in Book 5, I take it, because your Document 113 is there?

DR. HELTZ: Very well, Your Honor.

THE PRESIDENT: Then perhaps it is just as well now that we do give it an exhibit number, if we can depend upon you having it translated, and furnishing us with copies.

DR. HELTZ: Yes, I offer it as Exhibit 107 for purposes of identification, with the reservation of submitting it into evidence as soon as the translation is available.

THE PRESIDENT: Very well.

Now do we understand that that concludes your examination?

DR. BELTA: I have concluded my examination.

THE PRESIDENT: Do any of the counsel for the Defense desire to interrogate the witness further? If not, the Prosecution may cross-examine.

CROSS-EXAMINATION

DR. LUECKE

BY MR. LITKOFF:

Q. Mr. Witness, you testified that you had examined the documents in the Prosecution's document books, which represented letters, to and from your section at Weverhuzen and Dr. Vetter.

A. Yes.

Q. And that in all of these--

DR. WELTE: Objection. The counsel for the Prosecution has stated that these documents were letters which were sent to your Department witness? Would you please ascertain from the documents which are available to the Tribunal and the Prosecution, that that is incorrect?

THE PRESIDENT: Just a moment. We are getting a bad start here. There is no question before the Tribunal now. Ask your next question, Mr. Witness, don't answer until we indicate that it is proper for you to do so. Give Dr. Welte a chance to make his objection. The question was not complete?

MR. LITKOFF: It was not complete, Your Honor.

THE PRESIDENT: Now state it completely, and then give Dr. Welte a chance to make his objection, if he wishes.

BY MR. LITKOFF:

Q. You stated, Mr. Witness, that in all of the cases involved, there was a question of treating sick persons, and that, therefore, you never hesitated to send a preparation to Dr. Vetter.

Now, Mr. Witness, I call your attention to Prosecution's Exhibit 1703, in Book 87, on page 33 of the English, and 39 of the German, and ask you whether or not it is not true that throughout, the only thing discussed is the testing of the product, and there is no mention of helping any patients?

THE PRESIDENT: Just a moment now. I don't think that it will be necessary to discuss that objection that Dr. Welte has indicated he

wishes to make. Whatever the document shows, it shows on its face, that it is not a matter of construction. It is just a matter of what the document says. It would speak for itself, in other words. That objection will be sustained.

THE WITNESS: Mr. President;

THE PROSECUTOR: Mr. Witness, the Tribunal sustained an objection to the question. There is no question now.

MR. MINSKOFF:

Mr. President, I only intend one or two questions. There was a long line of questioning of this witness, and of a prior witness, for the sole purpose of showing the witness the documents, which always spoke for themselves, and asking the witness whether the intention was merely to treat sick persons and not to test the chemicals. I was merely going to call attention to the fact that through that one question, that all of the exhibits, - I think there are 10 or 15 of them, speak of tests. Without quibbling about tests or experiments, but speak of tests of products and not of treating patients.

THE PRESIDENT: That is a proper subject. If you formulate your question directly I do not now see how it can be objectionable at least until Dr. Helto suggests something that I don't think of. Ask another question. We will try and rule on it on another try. There is nothing now.

DR. HELTO: I have only a technical question. We are now dealing with Document NI 9411, if I am not mistaken. Is that true? Document NI 9411. This document 9411, was not handed by me to the witness before. Therefore, if he is to answer the question in regard to that document, this document should be handed to him. That is all I wanted to ask.

THE PRESIDENT: That will depend upon what the question is. Give the Prosecution a chance to ask the question, Doctor, and then if you want to object, we will hear you.

BY MR. MINSKOFF:

I could pass these documents up, to the witness, if it please the

Court, but my question is much more general than that. Without exception, all of the documents referred to, all of the shipments of pharmaceuticals, refer only to testing. Now I am asking the witness this question:

Q. Is it not true that there never was any question in any of the correspondence which you had with Vetter, and which is before this Court, other than the one exhibit that the Defense has offered, where there was any mention of treating patients; isn't that true?

THE PRESIDENT: You don't mean "patients" do you?

MR. MINSKOFF: Persons.

THE PRESIDENT: Very well, the witness may answer that question, if he can.

A. Dr. Vetter was to treat patients, he did not state what kind of patients, but for the purpose of treating patients, we sent to him the best possible preparations we had. He was not in a position to receive these preparations because they had not been in circulation for a long time.
BY MR. MINSKOFF:

Q. Mr. Witness, can you point to any one of the shipments which you sent out, where you refer to his treating of patients regardless of what kind of patients they are?

THE PRESIDENT: Do you understand the question?

THE WITNESS: I did not quite understand your question.

BY MR. MINSKOFF:

Q. You were told on direct examination to comment on a long series of correspondence where you sent preparations to Dr. Vetter. I ask you to point to any one of that entire series where it shows that patients are to be treated, that that is the purpose of the shipment, and where the letter does not show that it is just for the purpose of testing?

A. In the final analysis drugs are only being sent out so that sick people, ill people, can be treated with them.

Q. Do you understand that? You cannot point to one letter where it states that the drug is to treat patients?

A. That is a matter of course, in my opinion.

Q. I will put it another way. Can you point to one letter where it does not state that the purpose of the shipment is to test the product?

A. But these were not experiments; they were not tests.

Q. I did not say experiments, I said, "tests".

THE PRESIDENT: Do you understand the question, Mr. Witness, You are entitled to a question.

THE WITNESS: I am not quite sure what counsel for the Prosecution is getting at.

THE PRESIDENT: You are entitled to a question that you understand, and if you do not understand it, we will ask counsel to re-frame it for the purpose of letting you understand what information he is trying to bring forth.

Would you rather the question be re-stated to you, before you undertake to answer it?

THE WITNESS: Yes.

THE PRESIDENT: Will you try to do that, Mr. Prosecutor?

BY MR. KINSKOFF:

Q. Mr. Witness, you stated that you examined the correspondence between yourself and Dr. Vetter, and I asked you whether you can point to any one of the letters, either sent by you to Dr. Vetter or from Vetter to you, wherein it is stated that the purpose of the shipment is to treat sick human beings?

THE PRESIDENT: Now, Mr. Prosecutor, we will have to say that the question has been answered. He made an unequivocal answer to that, as we understand it.

BY MR. KINSKOFF:

Q. The other half of that question was, could you point to any one of these letters, and indicate that it did not state that the purpose of the shipment was the testing of the product you sent to Dr. Vetter?

A. It is quite a matter of course that a physician can ask for a

new drug for therapeutic purposes, for the treatment of his patients, will always say that he was undertaking, and he was trying to test a new preparation which he has so far not used, and that is how the word "test" gets into the correspondence, because it was a new preparation which so far had not been applied.

Q. Mr. Witness, to whom were you responsible in your position at Leverkusen?

A. I was responsible to Dr. Martens.

Q. And did you report to Dr. Hoeferlein directly on scientific matters, or did you report to Dr. Martens?

A. I reported to Dr. Martens.

Q. Was Dr. Martens the one who reported to Dr. Hoeferlein?

A. I cannot say that from my own knowledge. I would assume, though, that that was the case.

Q. You stated that you first heard or first learned that Vetter was treating concentration camp inmates towards the end of 1943; is that right?

A. Yes.

Q. Did Dr. Mertens know that at that time also? Did you inform him?

A. Yes.

Q. Who else was informed at Leverkusen?

A. First of all, Dr. Koenig, of course, in his capacity as expert for this preparation.

Q. Is Dr. Korten still at Leverkusen? Is he still your superior there?

A. Yes.

Q. Thank you. No further questions.

THE PRESIDENT: Dr. Nelte, you do not have very much leeway for further interrogation in view of the brevity of the cross-examination.

RE-DIRECT EXAMINATION

BY DR. NELTE:

Q. Two questions. Mr. Kinschiff asked you whether you discussed Dr. Vetter's report on the tuberculosis preparation with Dr. Koenig and Dr. Mertens. You said "yes", didn't you?

A. Yes.

Q. Were these two just as glad about the result which was contained in that report as you were?

A. Yes, they were rather surprised about the result and a short time thereafter we wanted to test the observations of Vetter in German clinics. We had already chosen a tuberculosis hospital for that purpose. That was in the Spring of 1944. In view of the confusion which resulted at the time because of many air attacks it was no longer possible to carry out this clinical testing of the tuberculosis preparation. It

is not really surprising if such a drug shows good results in the treatment of tuberculosis. Let me mention that in the United States there are two preparations, Promin and Promizol.

MR. SPEECHER: Mr. President, is it necessary to go with this? The witness says he found that the two other gentlemen were also happy.

THE PRESIDENT: Are you objecting?

MR. SPEECHER: Yes.

THE PRESIDENT: We sustain the objection. The question has been fully answered. The counsel may ask another.

Q. I thought that the witness was only trying to give reasons why that report constituted such a surprise and such a success and of the same Dr. Vetter, who was represented, as a completely different sort of person, otherwise. Now, Mr. Minskoff put to you Document NI-9411 from Document Book 87 or at any rate he tried to put it to you in connection with the question whether in any letters mention was made of anything else but tests. Have you got this document 9411?

A. I don't know what you are talking about.

Q. On page 39. Have you got Book 87?

A. I don't have the Document Book.

Q. Very well. It doesn't make any difference. Only for the purpose of the Tribunal I shall mention the document and I want to state the following on the basis of this letter: "If the granulate is brought into contact with this liquid too soon, the components of the preparation dissolve, and their unpleasant taste can cause the patients to vomit." That leads you to believe we are concerned with patients who are to be treated and not experimental subjects? It is written on the second page of this letter....."with respect —

THE PRESIDENT: Now, Dr. Helts, you are almost testifying here with respect to a matter which, according to your own observation, is a matter of record. If the document says that you say it does, it speaks for itself and it wouldn't be necessary to repeat it.

DR. MEYER: Your Honor, since the witness cannot remember the content of all the letters, I merely wanted to help him to find such a letter and to show that there are some letters here where mention is made of such matters which Mr. Waskoff seems to find missing. I am at the end of my examination, and have thus concluded the presentation of evidence for my client, Professor Hoerlein.

THE PRESIDENT: That is a good subject of argument at the proper time. The Tribunal is about to excuse this witness unless someone desires to interrogate him further. Since there is no such indication, Mr. Witness, you are excused from further attendance.

DR. FEICHTMANN: Dr. Feichtmann, counsel for Dr. von Knieriem.

Your Honor, I should like to use the time at our disposal before the recess by making the following announcement. In my presentation of evidence on behalf of Dr. von Knieriem I shall need approximately two days. I shall call no witnesses but I shall merely submit four document books and in addition call the witness to the stand in his own behalf. I should like to express the request to commence the examination of Dr. von Knieriem after the recess.

THE PRESIDENT: Very well. Can you tell us, Dr. Feichtmann, which books you will first need or perhaps we had better bring them all in if you are going to have the defendant on the stand. Judge Herroll, are the four books ready?

JUDGE HERROLL: I think so.

THE PRESIDENT: Very well. We will bring them back after the recess. We shall rise for our afternoon recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

AUGUST VON KNORR, defendant, took the stand and testified as follows:

THE PRESIDENT: Mr. Defendant, will you stand, please raise your right hand, say "I" and state your name.

A. I, August von Knorriam —

THE PRESIDENT: Swear by God the Almighty and Omniscient, that I shall speak the pure truth and will withhold and add nothing.

(The defendant repeated the oath).

THE PRESIDENT: Be seated.

DIRECT EXAMINATION

BY MR. BELCHAMAIN:

Q. Dr. von Knorriam, your career and your work for Farben or for the predecessors of Farben has already been recorded in writing in Exhibit 299, Document Book 11, XI 7020, and in Exhibit 1617, Document Book 36, XI 11506. Since 1925 you have been a member of the Vorstand of Farben and held an outstanding position in the legal structure of Farben. In the prosecution's case and in the examination of other defendants, you have heard that the management of Farben was strongly decentralized. Now, I ask you, was this principle carried out in the legal structure of Farben?

A. Yes, in an economic enterprise the legal department is only an aid to the business. That is to say specifically where the activity of the sales people and technical people is concerned. The organization of the legal structure must therefore be adapted to the other organization of the business. Consequently, the legal structure of Farben was also decentralized. This was necessary because in view of the complicated nature of the technical material; the individual lawyers gradually became specialists in their fields. One must imagine the thing as follows. If a big oil enterprise, for example becomes twice as big, and then perhaps ten times as big, it

becomes enormous enterprise. But it is still dealing with oil, and organization in an oil business, whether small or large, is always the same. There are, as a rule, four departments; production, refining, transportation and selling. A big chemical enterprise, however, like Farben, which operates on such a broad scientific basis, and makes discoveries, of course makes these discoveries not only in its own sphere of work. In the case of discoveries one does not know where one will end up, and if new discoveries are made which are not in any connection with the old fields of work, the business is expanded and becomes more complicated. New spheres of work from the point of view of production arise. I say all this in this connection only because the manifold and complicated nature of the concern affected also the organization of the legal organization.

Q. There were several legal departments in Farben. Were they independent and what departments of this nature were there?

A. At the end there were six independent legal departments, attached to the corresponding plants or sales combines — that is the legal department Ludwigshafen, the legal department "dyestuffs" at Frankfurt, the legal department "chemicals" of Frankfurt, the legal department at Leverkusen, the legal department "Agfa" in Berlin, and the legal department "Berlin 1877". These legal departments for the most part went back to the legal departments of the firms which had created Farben, which were joined together by the merger. These legal departments did not constitute the one legal department of Farben. There was no such thing. They belonged to the plant or sales combine in question. Each of these legal departments had its own head. These heads were subordinate to the head of the sales combine or the work combine in question, if they were not themselves members of the Vorstand. These legal departments on their own responsibility had to advise the technical and commercial men for whom

they were competent and had to take care of the legal affairs of their sales and work combines.

Q. Did you personally constantly supervise the legal departments?

A. No. There was no such constant supervision by me -- not even when contracts were signed. Of course now and then in individual cases my advice was asked by lawyers or colleagues on the Vorstand, especially in things where I had a special knowledge. For example, things connected with the patent field.

Q. What was your position in regard to the legal department at Ludwigshafen?

A. I had a closer relationship with this department. I had arisen from it, I became its head, and formally I always remained its head. In the course of time I was more and more occupied with general duties, and therefore I had less time to devote to the affairs of the Ludwigshafen department later. For the last few years one can hardly say whether the management of the legal department at Ludwigshafen was still in my hands or in my closest associate, Dr. Brendel's, hands. We did not take such formal things seriously and there was no reason to make any definite settlement.

Q. Where did you, Dr. von Knierim, do your work for the most part?

A. Until about 1942 primarily in Ludwigshafen. Then primarily in Heidelberg, where part of the legal department Ludwigshafen was transferred at that time. I was in Frankfurt frequently, especially on the patent matters. I was frequently in Berlin.

Q. During this time where were the other members of the Vorstand?

A. They were all over Germany -- in Frankfurt, Hoechst, Ludwigshafen, Heidelberg, Leverkusen, Louna, Wolfen, Bitterfeld and Berlin.

Q. Was there a constant contact among these members of the Vorstand and of what nature?

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A. They were all over Germany -- in Frankfurt, Hoechst, Ludwigshafen, Heidelberg, Leverkusen, Leuna, Wolfen, Bitterfeld and Berlin.

Q. Was there a constant contact among these members of the Vorstand and of what nature?

A. There was constant contact among them only insofar as they saw each other regularly at the Vorstand meeting which took place about every eight weeks. At the end they were less frequent. Of course individual members of the Vorstand did see each other occasionally, on special occasions to consult each other or meet each elsewhere.

Q. To get back to the legal departments once more, did you have any connection with any other legal departments -- any close connections?

A. My relationship with the legal department in Berlin III-7 was somewhat closer. The head of this department was my closest associate in my main field of work. This was the field of questions of corporation law. I am thinking for example of preparing for the stockholders meetings, the formulation of the resolutions to be adopted there, changes in capital, charters of companies, balancing the books at the end of the year, loans, and above all, all changes of structure in the concern from the point of view of corporation law and tax law.

Q. We know from the prosecution's case that there was a legal committee and you were the chairman of this committee. What was this legal committee?

A. In Berlin there were twenty to twenty-five lawyers, among them the heads of the legal departments and some other specially selected lawyers -- a total of about twelve to fifteen formed the legal committee, and I was the chairman of this committee. It met irregularly about once or twice a year. In the last thirteen years before the collapse there was a total of sixteen meetings. The purpose of these meetings was primarily to maintain a certain contact among these lawyers. They were spread all over Germany and if there had not been some arrangement they might hardly have known each other.

Then there were also at times questions which had to be decided uniformly for all of Farben. For example, at such a meeting of the legal committee, one time, we discussed the question on the basis of a lecture which was held, according to what principles it should be decided whether Farben's international contracts were dissolved by the war or not.

We discussed this question with the aid of the important Standard oil contract. Moreover the purpose of the legal committee was for lectures to be given on matters of general interest, and I also saw to it that the younger men had an opportunity to show what they could do. It was also a good opportunity to find out for what fields or rather in what fields individual men were especially interested, or in what fields they had special knowledge. Then sometimes one could resort to this special knowledge when the occasion arose. At those meetings I also reported about the field which I have already mentioned as being my main field of work — that is all the questions of corporation law, the stockholders meetings, increases in capital, changes of structure in the concern. Finally, I reported, at probably every meeting, about the patent field. This plays a considerable role in Farben, and the other lawyers did not understand it very well, while I had a certain knowledge. On the other hand, it was not the duty of the legal committee to supervise the work of the individual legal departments or to decide any practical concrete questions. Nor did it have to approve contracts which were to be signed. I recall from times long past that important contracts were discussed in the legal committee and were, in a sense, submitted for approval. But it was discovered that there was not much point in this practice. Really important and complicated contracts could not be presented in such a way that others can learn enough about the matter to take any responsibility without taking up a great deal of time, and it was so difficult that we gave up this practice decades ago.

Q. Were questions of labor law discussed in the legal committee — for example, the law for the regulation of national labor "Gesetz zur Ordnung Der Nationalen Arbeit", or questions arising from Sauckel's foreign labor program?

A. No. I recall, however, that once before the war a lecture

was held about the law for national labor. How important laws were frequently reported on in the committee.

Q. You said before the war?

A. Yes, before the war.

Q. What position did the legal committee hold outwardly?

A. Aside from these meetings, the legal committee had no function. Consequently it had no office of its own, no secretary, and no letterheads. It sent out and received no letters as the legal committee.

Q. Did this decentralization, Mr. von Knieriem, bring about disputes or conflicts as a result of a certain lack of clear vision in view of the enormous size of the business and the many contracts concluded by Farben?

A. This decentralization, of course, brought a certain danger with it. Every contract concluded by one department of Farben if, of course, binding upon the entire enterprise. Now, if now special arrangement had been made, then conflicting contracts could not have been avoided. One must imagine that at the time of the German collapse, there were about 1700 important current contracts. Thus as early as 1927 the central office for contracts was created, which was at first under me and later under Director Brande. Contracts had to be sent to this office when there was any danger of conflict. I should like to explain that with the aid of an example. When Farben bought the land on which the big building in Frankfurt was built, this purchase contract was perhaps an important contract. But it was not a contract which could conflict with any other. Contracts of that nature did not have to be submitted. But if one department of Farben concluded a contract about an exchange of experience in a certain field, then this contract, of course, could conflict with a previously concluded contract. And even if it was not especially important, it did have to be submitted. But that was not enough.

There was another test necessary which was much more difficult. It had to be determined whether the obligations taken on that contract would not have greater consequences for Farben than the office concluding the contract could see. If we had not been careful we would have concluded contracts which would unexpectedly have restricted Farben's freedom of action in future contracts. Consequently drafts of contracts were sent to quite a number of technical experts with the requests that the contracts in itself was good and reasonable. But if the definition of the field of the contract within which experiences had to be exchanged was not limited, then this or that office of Farben would in all future negotiations be severely restricted. This second check was whether there might be any conflict with future contracts, if I may put it like that. This all sounds very simple and natural. But it was extremely difficult and there was a big file and a great deal of registration work necessary to have any insight into this entire subject. The thought was apparently new at the time, it became known, and once a large American firm approached me -- I believe it was DuPont -- asking me whether they could not inspect this arrangement. Of course we permitted it.

Q. Did you have anything to do with this work which you have described?

A. No, I had nothing to do with the routine work and consequently I did not necessarily learn of every contract. But now and then, in especially difficult cases, I was asked for advice.

Q. Mr. von Knierem, you have explained your position as a lawyer in Farben. You have not mentioned any title. Apparently you did not have any title. But would it be correct if you were called the first lawyer of Farben?

A. From 1938 on, when Professor Solck left, I could rightly be called the first lawyer. The fact that I was the chairman of the legal committee was not alone decisive. I had held that position

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since 1933, and as long as Professor Solak was there, no one who knew conditions could get the impression that he was subordinate to me as a lawyer. But in my case there were some other considerations too. The most important thing was in charge of the field of corporation law, preparations for the shareholder meetings, drawing up balance sheets, increases of capital, and all the things that I have already mentioned.

If there are several lawyers in an enterprise, it is customary that the one who does this work is the first lawyer. Also, I was concerned with the patent field which is so closely connected with legal structure. It was important in Farben, and the other lawyers were not so well acquainted with it.

Finally, some importance has to be ascribed to the fact that I was a member of the Central Committee. This is not a very important committee, but membership in it does mean a certain distinction.

Q In the summer of 1945, you were taken to New York and you were examined as a witness there in a trial against the Standard Oil Company. Can you tell me what you were called there in respect to your position in Farben?

A I was a witness of the American Government. I had conversations lasting for several days with the Assistant Attorney General for the preparation of the testimony. On this occasion he had me explain the legal organization of Farben, and then he said to me in conversation: You cannot be called a general counsel; the right name would be "first lawyer."

Q Now, Mr. von Knierim, you have already said that you were the Vorstand member to whom patent affairs of the firm were entrusted. Will you please briefly describe how patent matters were dealt with?

A Here again the work was decentralized. There were five patent departments. They had a large staff of technical experts and chemical engineers, and worked with a high degree of independence. These were the Patent Departments Ludwigshafen, Hoechst, Leverkusen, Wolfen-Pilz and Wolfen Dyestuffs. The heads of these five patent departments held meetings of the Patent Commission at which I presided. These meetings took place more often than the meetings of the Legal Committee, perhaps about six times a year. No questions were discussed affecting individual patents. A uniform attitude in doubtful and basic questions

in regard to the Reich Patent Office was discussed. At those meetings we also followed the changes in the patent laws of the world. Then, especially in the last few years, there was a certain question which took up more and more of our time. That was the important question of the so-called compensation of inventors. Farben paid its inventors a certain sum, depending on the significance of the invention, and depending on the advantage accruing to the firm, because the inventions of the chemical engineers employed by Farben, according to the contracts, belonged to Farben, as is customary elsewhere too.

Q Was your responsibility set down in writing in any way?

A No.

Q How would you describe your jurisdiction in legal and patent fields, approximately?

A I believe several things have to be distinguished. First of all, the matters which I dealt with either alone or with other, younger lawyers of Farben: of course I then bear the responsibility. This includes, first of all, the fields of corporation law, which I have already mentioned, and this also includes cases when I helped to negotiate contracts and helped to formulate the contracts. In the last few years that was more rarely the case.

As an example, from earlier times I may mention the big Standard Oil contracts, and from about the middle of 1930 the work in the field of I.G. Chemie (Basel) which was very complicated. I, of course, also bore the responsibility when I was consulted in special cases, either by other lawyers of Farben, actually on questions which did not actually belong to my field of competency. And I was occasionally consulted by Vorstand members. This happened more frequently in the field where important matters were connected with patents, or with exchanges of experience. In the latter field I had a certain amount of experience because arranging the exchange of experiences from the point of view of

contracts was familiar to me because it was important in the Standard Oil contract, which was worked out with especially great care. Those regulations were often taken as a model. For the work of the legal departments which, as I said before, worked independently, I have no responsibility, or only insofar as I had to collaborate in seeing to it that the right man was put in the right position. For example, if I observed that one of those men was incompetent. Then I would have had to go to the head of the Sides — or Worms Combine and perhaps even bring up the matter in the Vorstand.

I may perhaps say a few words by way of summary. I have often asked myself, also in later years, whether the legal system could have been set up differently, and perhaps in a better way. There are different views on this subject as to whether in such an enormous enterprises this is the most desirable form to carry on business. But this question is not the issue here. But if one has such a large enterprise, then in my opinion the legal organization cannot be any different; it must work in a decentralized fashion and it must be coordinated at two points. One must avoid conflicts in contracts, as I have already explained, and there must be an opportunity for the individual lawyers to know each other and to find out what kind of people the others are; what their talents are and where they lie, and where their special knowledge lies, so that they can help each other. And in some cases there must be a certain uniformity of attitude, although otherwise in such a large enterprise it is not good to have the people and the work too uniform.

Q A few more questions as to detail, Mr. von Knierim. In what capacity and for what reasons did you attend the meetings of the Technical Committee, the TEA?

A The TEA almost always discussed contracts, and very often discussed patents. I was, therefore, often present as a guest. Often I was there only during the introductory scientific lecture, and during the discussion of these legal questions and patent questions.

Q Did you also attend meetings of other committees, for example, meetings of the Commercial Committee or the Advisory Council of Entrepreneurs, or the conferences of the plant managers at which Schneider presided?

A I often attended meetings of the Commercial Committee. Either Mr. von Schnitzler asked me, with reference to a special point of the agenda, or I spoke to him on the telephone beforehand, and said that I was interested in one point and if he had no objections I would attend.

I did not attend any meetings of the Unternehmensbeirat Advisory Council or the Council of Plant Managers.

Q. That will suffice in regard to your position within Verbon. I shall come back to it in the discussion of the various counts of the indictment. In Supplement A of the indictment the Prosecution lists the high political state and military positions, "which the defendants held in the financial, industrial and economic life of Germany." This was a quotation of the indictment.

You have already tried to correct those statements in Exhibit 1617, which I cited earlier, which is in Document Book 66. To explain this list I should like to ask you one thing. Did you hold any position in the organization of industry?

A. No, I had no connection with the Reich Chamber of Commerce. As for the Reich Group Industry I was not in the presidium nor in the small or large council, and I was not chairman of any committee. I never saw the president of the Reich Group Industry, Mr. Zangen, but I was on the Legal Committee, Patent Committee, and Cartel Committee as a member.

In the Economic Group Chemistry I was not on the presidium and I was not a chairman of any committee. I was a member of the Cartel Committee.

Q. Were you a so-called "Wirtschaftsfuehrer"?

A. No.

Q. For what reason did you become a member of the various committees?

A. In a certain sense I was a specialist in the field of corporation law, patent law, and cartel law, and only in these fields did the committees work, the committees of which I was a member.

Q. Did you have anything to do with important persons in the Reich Ministry of Economics, for example, the Minister of Economic Funk or his predecessor Dr. Schacht?

A. I never saw Funk. I saw Dr. Schacht occasionally up to 1930; then I did not see him for fifteen years. I saw him again in

incarceration.

Q. Did you visit Prof. Krauch in Berlin when he was working for the Four Year Plan there?

A. From 1936 to 1945 I saw Krauch only once in the office in Berlin, for a short time.

Q. Was the assignment of Prof. Krauch to the Four Year Plan discussed at the Vorstand?

A. No, certainly not.

Q. Did you hold any office in the Party?

A. No.

Q. Were you a member of any organization affiliated with the Party?

A. No, with the exception of the obligatory membership in the German Labor Front and in the League of Lawyers.

Q. Did you have any personal relationship with any of the leading Nazis? Which of them did you know?

A. I did not know either Hitler, Goering, Hess, Himmler, Goebbels, Ribbentrop, nor any other prominent members of the Party.

Before he went to Poland, when he was still Reich Commissar of Justice, I met the lawyer Frank occasionally. And once Ley, when he held a lecture in Ludwigshafen. The Heidelberg Kreisleiter, the Kreisleiter of my district, and the Gauleiter, I never saw.

Q. Were you a member of the Academy for German Law?

A. When the Academy was founded three persons out of Farben became members. I was not one of them. My later membership came about as follows. I was chairman of the Work Combine for Protecting Copyrights and Patents. This was a technical organization for patent law, trade-marks and copyrights. It was seventy years old and enjoyed great respect abroad. They issued a publication which was wholly respected abroad. I occasionally published articles in this magazine. This community of work dealt with these fields in three

committees — those fields for patent law, trade-mark law, and copyright law. It collaborated in legislation in this field.

Now, when the Academy for German Law was founded, the same fields were to be represented in committees there. That would have been senseless duplication. Consequently, the committees of the Work Groups were declared simultaneously committees of the academy, and a chief committee was established to incorporate these three committees. It was called The Committee for the Right Mental Creation. I was the chairman of this committee, and I, in this way, became a member of the Academy.

Q. Did the Nazi regime have any favorable influence on your economic position, your income, or your status otherwise?

A. No, it had no influence. My business income was the highest in 1930; later it never reached the same height.

Q. Thank you.

DR. PELCKMAN: Mr. President, this seems to me a good point to submit a few documents on what has just been discussed. Would you please look at Document Book 1? I offer from Document Book 1, Document No. 1. It is an affidavit.—

THE PRESIDENT: Pardon me, counsel. So we are started right, will that be your Exhibit 1 or had you any exhibits?

DR. PELCKMAN: Yes, Exhibit 1.

THE PRESIDENT: In that connection, you have offered no exhibits hitherto that will be confusing?

DR. PELCKMAN: No.

THE PRESIDENT: Very well.

DR. PELCKMAN: This is an affidavit of the lawyer Clemens Brendel. It deals with the organization of the legal system. In the English translation in the index I would like to correct a few important mistakes.

It should not be "Legal Section"; it should be "Legal System,"

as the interpreter has just translated it. "Section - is very misleading.

Then the "Legal Committee of the Central Office for Contracts, Duties, Responsibilities of Professor von Amerion, with details."

Then I should like to correct, "Legal Department Ludwigshafen"; it should not be "Legal Section of Ludwigshafen" but "Legal Department".

Then the description in general, the "Legal System within Farben".

The second affidavit, Document 2, I offer as Exhibit 2. This is an affidavit of Dr. Gustav Kuepper, who has been a witness here. He deals as an example, with the organization of a certain legal department. There were several, as the witness has testified. I again want to correct the translation. It should read again, "Legal Department" instead of "Legal Section", and it should not say, "of Farben", because the witness has just testified that there was no Legal Department of I.G., — that is of Farben, there was no such Department. That is the Legal Department of the Dyestuffs in Frankfurt. That is a special, local department.

I do not have to go into the details of all of these affidavits. I merely want to draw them to your attention. I now offer Document No. 3 as Exhibit No. 3. It is an affidavit of Reinhard Ditscher, Ludwigshafen. It contains a list of meetings of the legal committee since 1933, — from 1933 until the collapse there were only 16 meetings. The last one was in November, 1942.

As a supplemental there follows an excerpt from the minutes of the meetings, with the subjects which were discussed. To see from this that the subjects were quite varied.

As Exhibit 4 I offer Document No. 4. This is an affidavit of Dr. Frits Fratje about the duties of the central office for contracts and the relationship of Dr. von Knierim to this central office. Under No. 3, the extent of this office is characterized by saying, "Throughout the time of the existence of the Central Office for Contracts altogether 2600 contracts were put on file, of which at the time of discontinuance of work through the German collapse about 1700."

No. 4, "Herr von Knierim because of his preoccupation with other matters could not concern himself with the current tasks of the Central Office for Contracts, however, I remember that in rare cases, more difficult and more important questions of collision were discussed with him".

Now I should like to offer Document No. 5, as Exhibit No. 5. It is an affidavit of the attorney Friedrich Silcher. It also contains excerpts from the minutes of the working committee and the Vorstand since 1933. In so far as they refer to reports and matters of Dr. von Knieriem.

In this way we want to ask the Tribunal acquainted with the special nature of the field of work of Dr. von Knieriem, so far as it was discussed in the working committee or the Vorstand.

As Exhibit 6, Document No. 6 - I have just been informed that I should add something regarding Exhibit 5, the statement of my colleague, Silcher reads that all records were checked. This is on page 27 and 28 of the document book.

The only thing that has not been considered is the record of the 22nd meeting on the 14th of November, 1940, because it could nowhere be located. I may add that no minutes were prepared at this meeting, the recording secretary at the time was Dr. Buhl. A few days after the meeting of the 14th of November, he met with a fatal accident.

Now I shall offer document No. 6 as Exhibit 6, an affidavit of Reinhard Ditscher. On page 60-61 it shows the income of Dr. von Knieriem in 1930 until 1944, which shows it was the highest in 1930, and it shows that during the war his income fell off slightly.

As Document 7, there follows some photostats of compilations which I offer as Exhibit 7. The photostats, as the Tribunal has been informed, unfortunately do not show what we are interested in. The most important entries are missing in the translation of these photostats. The figures in the columns in the middle and in the second and third page, -- the graphs of the development of patent applications are missing.

There are parts of the statistics on patents of Farben. On the basis of a consultation with the Secretary General, the Tribunal was to be given the German photostats as well, so that this mistake can be

compensated for. I do not know whether the Tribunal has these German copies.

THE PRESIDENT: They do not appear to be in our books, — at least not in mind. What do my associates say. Do you have them?

No, we do not.

DR. FELCKMANN: Perhaps I may hand them to you now.

THE PRESIDENT: Very well.

DR. FELCKMANN: In the German books, Mr. President, you will find the German copies and the figures which I am interested in are included there.

THE PRESIDENT: I am wondering, counsel, if it would be proper if we should lift out of the German books, if our Secretaries lift out, the photostats and put them in our English books at the same place. Would that serve that purpose?

DR. FELCKMANN: That would serve the purpose very well. Thank you.

These patent statistics are to show the following. They have been taken from the year 1933, the first two pages, and 1941, the last two pages; they are to show the extent of the field of work of Dr. von Guericke. If we take the figures of the various patents in the various countries, and on the various subjects. In the first photostat we have for the year 1933, 6,707, pending matters, — 6,707. The total for 1933 is 22,149.

From photostat No. 2, you can see the development of patent applications by Farben in Germany and abroad, from 1926 on until 1938, and we see that the applications abroad, after 1933, increased. We can see that from the fact that the rectangles become bigger. That can be seen only from the German copy.

In 1933 we filed foreign applications, 3,696, increasing in 1937 to 6,123, etc.

The same is shown in the statistics for 1941. The next Exhibit is Document 8, which becomes Exhibit 8. It shows in more detail, the number

of patent applications in the years 1925 to 1941 in Germany and abroad,
with special consideration to the most important industrial countries.

Here again we see, since 1933, in the total of foreign countries,
that -- is the second column from the end, -- an increase in applica-
tions.

I have finished this document book, Mr. President, and I shall go
on with the examination of the witness now.

THE PRESIDENT: Counsel, I think we had better adjourn at this time.

The Tribunal will rise until 9:30 tomorrow morning.

(Tribunal in recess until 0930 hours February 6, 1948)

*Commission. hearings - 6. Febr. 48 M (Pages 6826 to 6881)
after transcript 11 Febr. A because of pagination.*

1948
6 Feb-48-FL-1-1-Mills (Int. von Schon)

Court No. VI, Case VI

Official Transcript of Military Tribunal VI
in the matter of the United States of America
against Carl Krauch, et al, defendants, sit-
ting at Nurnberg, Germany, on 6 February 1948,
0930, Justice Shabo, Presiding.

THE MARSHAL: Persons in the Courtroom will please find their seats.
The Honorable, the Judges of Military Tribunal VI. Military Tribunal VI
is now in session. God save the United States of America and this Hono-
rable Tribunal. There will be order in the court.

THE PRESIDENT: You may report, Mr. Marshal.

THE MARSHAL: May it please your Honors, the defendant Baergin, Krauch,
Schmitz, Macfliger, and Lautenschlaeger are absent from the Court Room.

THE PRESIDENT: The defendants named by the Marshal are excused on
their own applications from attendance today. Are there any preliminary
announcements?

MR. SPRECHER: Mr. President, I see that Dr. Nolte is here this morning
so I thought it might be an appropriate time to go back to a document to
which the prosecution objected during the presentation of Dr. Nolte's
evidence for the defendant Hoerlein, which Your Honors admitted subject to
motion to strike by the prosecution -- that is Hoerlein Document 79, Hoer-
lein Exhibit 71, which is found in Document Book 3 on page 38 of the En-
lish. Now, since this is quite an involved matter, as we pointed out at
the time, we had some difficulty. We can make a motion to strike paragraphs
1 and 2 without too much difficulty. But beyond that a motion which would
eliminate what we believe is clearly incompetent and not only clearly in-
competent, but improper as a means of attempting to bring into evidence
before this Tribunal. We think that our objection based on that point would
so eliminate the text and the sense of this affidavit that there would be
little left for Dr. Nolte with respect to what points are incompetent ex-
cept for their improper as well as incompetent objection in the affidavit.
Therefore we have this problem which I'd like to raise before the Tribu-
nal.

Commons - hearing - 6 Feb 48
Page 6826 to 6836 Rule 6C
after transcript 11 Feb. 48
because of pagination

THE PRESIDENT: When the prosecution was presenting its evidence, we were confronted from time to time with motions to reject parts of an affidavit that some of the defendants thought were improper. We said at that time that we would not delay the trial of the case to edit and strike from those affidavits the parts that were subject to objection. Counsel might file a motion or might trust the Tribunal to ignore the incompetent parts. That policy still stands, but this is hardly comparable to that. The reason that it is apparent on the face of the affidavit, which we only glanced at at the time it was presented, that there is very much not only incompetent, but highly improper matters in this affidavit. We have admitted it, but we would suggest that counsel for the defendant Heerlein confer with the prosecution and see if this affidavit can not be revamped in a way to bring to the attention of the Tribunal the facts with which we might be concerned, but to eliminate the surplusage, the immaterial matter, and what the prosecution has denominated the improper and prejudicial matter contained in this affidavit. If the Tribunal is required to pass on a motion to strike out the parts which the prosecution has indicated, that it desires to object to, it may destroy the structure of the affidavit so that its really not intelligible. Sometimes objectionable matter is found in the same sentence with unobjectionable matter and the result might be that an injury had been done to the defendant with respect to matters that would be entirely proper and within the scope of an affidavit. The Chair would suggest to Dr. Melte that he give consideration to the fact to revising his affidavit if his affiant is still available. Of course, if it's a situation where the affiant can not be found or is not available so that a new affidavit can not be obtained, we will have to deal with this one. But we suggest that it would expedite matters and certainly be more beneficial to the Tribunal if the author of the affidavit would revamp it rather than to impose upon the Tribunal the burden of trying to eliminate the wheat from the chaff and thereby perhaps

resulting in a rather awkward situation so far as the affidavit is concerned. We are making no order on that. But since we have seen the affidavit that occurs to us as perhaps the best approach to the problem with which we are confronted, we will not ask you at this time to make any commitment, Dr. Helte. You may consider it in the light of our observations and reach your own good judgment as to whether or not you wish to consider revising your affidavit and in the meantime the prosecution will not be prejudiced by its delay in making the motion to strike.

DIRECT EXAMINATION (Cont'd)

DEFENDANT AUGUST VON KNIERIEM (Resumes stand)

BY DR. PEICKMANN:

Q.- Mr. President, in examining the witness on the stand, I should now like to deal with the individual counts of the indictment. The first is the subject of preparation for aggressive war and deals with the so-called alliance with Hitler. What did you know, Dr. von Knieriem, about the meeting with Goering on 20 February 1933, and the subsequent donation by Farbon of 400,000 marks?

A.- Nothing at that time. I learned of both these facts after I was arrested.

Q.- What did you know about Goering's speeches in December 1936 in the Prussia House? Did you hear anything about them from Mr. von Schnitzler?

A.- I know nothing of a report made by Mr. von Schnitzler. If there was any report in the press on these speeches at the time perhaps I read these reports. I do not recall anything else.

Q.- When did you learn that Mr. Bostefisch was a member of Himmler's Circle of Friends, and what did you know about the donation of 100,000 marks to the SS?

A.- I heard of both for the first time when I was arrested. The English Colonel Tilley told me that Mr. Bostefisch was a member of the Circle of

Friends. Colonel Tilley was a witness here. That was in the Spring of 1945, in Linsch. As for the donation of 100,000 marks to the SS, I read about that while I was in Kronsberg — I read it in a German newspaper. A letter of Mr. von Schroeder was published there giving the names of the donors.

Q.— Were not all donations approved by the Central Committee? You were a member of the Central Committee from 1938 on.

A.— Aside from certain local donations, that was the practice. But there were many donations which were not decided upon by the Central Committee. As for the donation of 100,000 marks which has just been mentioned, and its apparent repetition in some subsequent years, I am sure nothing was mentioned in the Central Committee. And the birthday presents to Goering too were never discussed in the Central Committee, nor the donation to the Sudeten-German Free Corps.

Q.— Can it not be determined which donations were approved by the Central Committee and which were given without the knowledge of this committee?

A.— Yes, that can be determined. Mostly one day after the meeting of the Central Committee there was a Vorstand meeting. At the end of this Vorstand meeting, Mr. Schatz listed the donations which had been approved by the Central Committee on the previous day. These donations were then recorded at the end of the minutes of the Vorstand meeting. Donations not approved by the Central Committee may have become known to that office subsequently. That does not mean, however, that they were approved by the Central Committee and that the members of the Central Committee were informed.

Q.— The chain of circumstantial evidence regarding the charge of aggressive war begins with the rearmament. You no doubt do not deny that you knew about the rearmament. What was the reason for rearmament, in your opinion?

A.— I never took any interest in politics. Perhaps that was a mistake. Perhaps that was a mistake that we all made. Perhaps that is the fault of many Germans who belonged to our level of education. I had the same informa-

ation that the German population generally had through the press. It was known that until the fall of 1933 Germany had attempted to achieve the disarmament of other parties which was provided for by the Versailles Treaty, by way of negotiations. The failure of all efforts to this end was presented to the German people as unjust, and was felt to be unjust by the German people. Then in the fall of 1933 Germany left the League of Nations. Now, the issue was that the parity of armaments which was originally intended to be achieved by disarmament of the others should now be achieved by rearmament of Germany. The point of view prevailed that one had to be prepared in order to defend oneself against foreign attacks. The attack into the Ruhr in 1923 was in everyone's memory. France had invaded German territory in peacetime and had occupied the left bank of the Rhine. In addition, the danger threatening Germany from the East, from Russia, was presented to the German people. Whether this danger actually existed or not is not important now — but the people believed in it. That was the attitude of the German people, and in the Spring of 1935, when general military service was introduced in Germany and the disarmament clauses of the Versailles Treaty were abrogated, that was not considered to be wrong. It was not considered to be a violation of international conventions. I believe, if I may remark this, that this point of view was upheld by the judgment of the I.M.T.

Q.- It is perhaps important to know, Mr. von Kauter, whether you had any personal experience as to how helpless a country is without a military force.

A. I was speaking before of the invasion of the Ruhr, the occupation of the Ruhr, in 1923, when France occupied German Territory in peacetime. I experienced these things personally. I was in Ludwigshafen at that time, which is on the left bank of the Rhine. One afternoon at an unusual time, Bosch called a Vorstand meeting. He told us that he had, through private channels, received some very unusual news. The French would probably, in the following night, occupy the left bank of the Rhine, including Ludwigshafen, and the Badische Anilin und Soda Fabrik. He said he wanted the Vorstand members to leave because he had also heard that the French were especially interested in arresting some Vorstand members of the Badische. I did not leave on that afternoon. My boss, Geheimrat Michel, was away, and was expected back that night. I wanted to warn him and I remained there overnight. But about three o'clock in the morning Geheimrat Michel came to my bed. He had just returned. He said the French were approaching and were half an hour away from Ludwigshafen. Then both of us went over the Rhine bridge to the right bank. We went to Heidelberg where the other Vorstand members were. We lived in a hotel there, but our names were not on the hotel register. It had become known that the French had sent armed men occasionally into unoccupied Germany in order to arrest certain persons. We split up in Heidelberg. Many of us lived under false names in the hotel. If we wanted to go to Berlin from Heidelberg at that time we could not go by the direct route. That went for a small stretch through occupied territory and the French had once stopped a train and taken people out. You can imagine that all these things made a very deep impression on me.

Q. Now, the prosecution considers it especially incriminating that the rearmament measures were kept secret and that Baron obeyed the official instructions. What do you have to say to that?

A. Every State keeps measures connected with armament secret and

protects them with anti-espionage laws and laws against treason. I see nothing unusual in that. Farben had to obey the instructions of the authorities.

Q. Did the concept of a mobilization plan set up by the State seem anything unusual or frightening to you? Did you not consent the idea of aggressive war with such a mobilization plan?

A. No, certainly not. Recruitment requires a State mobilization plan. That is true especially of a country in Central Europe, a country which can be invaded immediately by its neighbor if a war breaks out. That is true especially of Germany which is right in the middle and is surrounded by countries which might be enemies in case of war. Moreover every German and especially every older German, is quite familiar with the term, the mobilization order. Every German, and especially every German reserve officer, before the First World War, received his personal mobilization order every year. My personal mobilization order, I remember, in the years 1912 to 1913, consisted of the following. On the second day of mobilization I had to go to a certain place between Hamburg and Berlin. I had to receive one hundred horses there and take those one hundred horses to Potsdam. Then I had to report to my regiment in Berlin. I believe that in other continental countries this situation is no different. This is rather difficult for an American to understand. The situation is different in America, at least I believe so. America does not have general military service in this sense and probably has no preparations for mobilization. America was less familiar with the idea of war and preparation for war. That can be seen in a small matter in my own field. As far as I see, America is the only country which never knew the institution of so-called secret patents, up to, I believe 1941. This is probably because America is the fortunate country without neighbors.

Q. Were you personally, Dr. von Weizsäcker, informed of the war-

ious stages of rearmament and did you know of Hitler's belligerent plans?

A. I was not informed about the developments in rearmament. This had very little connection with my work. As for your other question, I was surprised by each of the events. The fact that Germany left the League of Nations, the events in Austria, Czechoslovakia, Poland. I was surprised by each of these events. Also the campaign against Denmark and Holland and Norway and the invasion of Russia.

Q. Can you cite any special circumstances, because of which you did not expect any aggressive war?

A. I believe that in the further course of this trial many circumstances will be named which will show that, but you are no doubt asking only about what I personally could see at the time.

Q. That's right.

A. I should like to say that I remember very well that in the summer of 1939 in the Farben meetings it was discussed and approved to build a new factory, a new color-film factory, very near the Polish border. The building was actually begun; when the war broke out immediately afterwards construction, of course, had to be stopped. I remember the negotiations on exchanges of experiences and the fact that in the spring and summer of 1939 DuPont and Standard Oil, in Lubrizhaven, received important information. Also the fact that we had participation in an English magnesium factory and exchanged experiences with them.

Q. Now, we must deal with another point in somewhat more detail. That is patents. The Prosecution has charged that Farben took special measures in cooperation with the German Wehrmacht in order to keep patents and processes secret from other countries in the interests of German rearmament. These are Points 20 and 21, and 30 and following in the indictment.

My question is, did Farben have any interest in keeping patents and experiences secret from other countries?

A. No.

Q. But surely Farben had to observe the legal provisions. What legal provisions were in effect before 1933?

A. Before 1933 there were provisions against military treason and also the so-called Espionage Law of the 3rd of June 1914, which punished anyone who had "Intentionally given writings, drawings, or other objects the secrecy of which was required in the interest of the country into the hands or to the knowledge of another, and thereby endangers the security of the Reich."

Inventions are not mentioned in this law. Then there was the secret patent law which reads as follows: "If a patent is of interest for the purposes of the Army and the Fleet, then by application the patent will be issued without any publication. In this case, registration in the list of patents will not be made."

There were similar rules in England and France. I did not know that before 1933 these regulations were of any significance for Germany.

Q. Now, how was it after 1933? Was the legislation changed in any way?

A. Yes. First of all there was a change in the legislation. By order of Reich President von Hindenburg, of the 28th of February, 1933, the Espionage Law was changed and the death penalty was introduced for some cases. The following, however, was more important. In 1933 a reform of the entire penal code was planned in Germany. The Prussian Minister of Justice published a memorandum with suggestions. This memorandum was published and sold openly in bookstores, and all people were requested to express their opinions. Two important suggestions were made in this memorandum.

First, it was suggested that the following provision be set up, and I quote: "A German is to be punished for treason if he gives an invention of his—"

Q. Mr. von Krieger, I will cite the passage in the document book for the interpreter. It is in Document Book 2, Document No. 11, page 102, the second paragraph from the end, just before the heading "Second Title".

Now, will you please repeat the quotation, Mr. von Krieger?

A. I said that this memorandum gave two suggestions which are important for this trial. The first suggestion was to introduce the following provision, and I quote: "A German is to be punished for high-treason if he communicates to foreign countries an invention made by him which is of essential value to the national defense without first having offered same to the competent German authorities for adoption."

And the second suggestion in this memorandum was to create a new crime—economic treason, with about the following contents.

Q. This quotation is on page 103 of the document book. Do you want to quote it?

A. I shall not quote it. It is in the book. I want to explain what it was about.

Q. Very well.

A. The sense, briefly, of these regulations was that a German could be punished for economic treason, who, to the detriment of the national economy, gave secrets to other countries, secrets in technical fields. There was no doubt that in the second provision regarding economic treason, inventions were included.

Now, this memorandum had pointed out that criminal laws were to be retroactive, that it was not to be *nullum crimen sine lege*. I had set down and worked out a memorandum myself which in the name of Farbon was sent in to the Reich Minister of Justice. Regarding the first provision, I said that it was impossible to create a criminal law where the concept of the essential importance has any significance. I said that a person cannot be condemned to death if he is mistaken about the idea of essential importance. Now, the second provision regarding economic treason. I said that it was still more terrible to inflict the severest punishment on someone because he allegedly gave inventions to other countries to the detriment of the German national economy.

I remarked that as to whether something is a detriment or a blessing to the German national economy is sometimes not until afterwards apparent. But one certainly cannot know that beforehand. I included a little example in my memorandum, and it seems to me that this was a good example, and I want to give it to you.

In this memorandum I said that the Badische Anilin und Soda Fabrik after the First World War had had the best nitrogen process in the world, the Haber-Bosch process. (This process has been mentioned repeatedly by Prosecution.) The whole world was coming to Ludwigshafen in those days and they wanted to get a license for this process. We considered our policy for a long time and we decided that we would not give the license. We believed that at that time it would be more advantageous for us to keep the process for ourselves and to export products. In general one earned more in that way than through royalties.

What we did was wrong. What happened was the following. Such technical

patents cannot, in the long run, be kept secret. The world learns of them through scientific papers, through patent publications; the processes are imitated and similar processes are developed. And that happened in this case. The Claude process was developed in France; the Castle process was developed in Italy, and process in America, and the world produced nitrogen without us—and probably just as well.

In our opinion these processes were violations of the patent such patent trials cannot be carried on all over the world.

It was wrong for us not to give our experience to other countries. In other words to do what this memorandum considers correct.

Only in two cases did we make an exception at that time. We gave the process to Norway, to our old friends, Norskhydro. They have also been mentioned in this trial. And in addition, under the pressure of the occupation force, we gave it to France --

Q.- Just a minute; under the pressure of the occupation force? Is that what you said?

A.- Under the pressure of the occupation force, we gave it to France. And from these two countries we received royalties over a decade.

Now, in my memorandum I said: "You can see how the matter is. We thought we were clever and experienced men in the Reich, but we were wrong about what would be a blessing and what would be a detriment."

I also said in this memorandum that if this suggestion became a law, international collaboration on a world enterprise would have to stop, and that would have very serious consequences for German national economy. Finally, we pointed out if we were not permitted to fulfill the terms of our international contracts, then the consequences would be impossible to foresee.

Finally, I pointed out once more that it is an incredible idea to expect a businessman who makes a mistake on such a difficult question to be dealt the death penalty according to a retrospective law.

Q.- Did these two provisions suggested in this memorandum become law?

A.- No. Until 1945 this penal code was not completed. But the suggestions continued, and the discussion, particularly about these two suggestions, one had to expect a special law at any moment which would put them into effect, and then, as I have explained, they would have been retroactive.

Q.- What actually happened from the point of view of legislation?

A.- On the twenty-fourth of April, 1934, the Espionage Law which I

mentioned was included in the penal code as paragraph 88, and some provisions were made stricter. The death penalty was provided for. The Reich Patent Office, justly, took the point of view that inventions were included.

Q.— Did this stricter attitude on the part of the government affect the administration too? For example, in the management of patent applications and the issuing of patents?

A.— Yes, that began at the end of 1934. It began with the certificates of priority. I must explain in a few words what they were. One of the most important provisions of the international patent union to which practically all countries in the world belong — I believe there are forty-four — is the following. Every member of one of the contracting states has the priority of his invention in all other countries for one year.

To give an example. If a German, on the 1st of February of one year, in Berlin, reports an invention, and on the 1st of April of the same year a Frenchman independently makes the same invention and registers it in Paris; and if on the first of September of the same year the German registers his invention in Paris — he has the priority, although the Frenchman registered his invention first, in Paris. So that if it can function, one must have a certificate of priority when registering a patent abroad. That is a certificate that one has registered it in one's own country. These certificates of priority are sent out by the Patent Office in the form of blanks. Now, since the end of 1934, these blanks carried a notation, briefly: Be careful, observe the provisions of paragraph 88 regarding treason. Be careful when registering a patent abroad.

And from the middle of 1935 on, this blank had a still more stringent formulation, also pointing out that the person registering a patent in Germany would register it abroad at his own risk, and he was advised: In all doubtful cases to inquire of three offices — The Army, the Navy and the Luftwaffe.

Q.- For Germany these strict warnings were new, as you say. Do you know whether the attitude of the other governments regarding persons registering patents was similar?

A.- It was similar. It is interesting at that time that a note was issued weekly of about the following contents in the official English patent publication. Persons patenting inventions are hereby informed that in doubtful cases they should report the details in confidence to the Admiralty, the War Ministry and the Aviation Ministry, so that steps can be taken to keep such matters secret, as may be subject to certain legal provisions.

Q.- What was I.G.'s attitude toward all these strict government measures which you have described?

A.- I believe you will understand if I tell you that there was a great unrest, especially among the technical men of Farben. They often came to me and asked what they should do. We have to give such-and-such a discovery to other countries. Are we not committing treason? Can we not be condemned for that?

And even if in an individual case it could be determined perhaps by inquiry that there was no military significance, there always remained the threat hanging over our heads that the provisions about economic treason which I mentioned before might be put in effect with retroactive force.

One must realize that these dangers existed for the following cases: Registration of discoveries abroad, giving technical experiences to other countries, and conclusion of new contracts by which we were obligated to give technical experiences.

Q.- The Prosecution has submitted, as Exhibit 101, in Book 6, a letter of Krauch's of the 5th of September, 1935. This letter informs various offices of Farben about the establishment of Vermittlungsstool W. Was this office created because of the difficulties which you have just been describing?

A. I cannot give any exact answer to that, because I was not present at these conferences, but there is no doubt that there is some connection. It is a matter of course, that once this office was in existence, we used it in such questions. For example, patent questions, there would have been no point for each Farben office in bringing people to Berlin. It was better to have people there constantly, who knew the individual referent and officials in the Ministries.

Q. Did you succeed in clearing up all of the problems that came up, and in calming down the Farben people on this question, - that is the question of Farben in patent and contract matters?

A. We discussed these questions very thoroughly with each other. Finally, on the 10th of October, 1935, I sent a letter to a large number of Farben men, about the treatment of patent and contract questions with respect to National Defense. This letter contains the details. Now with reference to collaboration again between the Vermittlungstelle and the various Wehrmacht agencies, I can say in summary that as a rule, when we made inquiry we were assured that there were no objections from the military point of view. The risk with economic treason we could not get away from, and we took this risk.

Q. Now what in general was the result of this forced consultation of the Wehrmacht, that is were many registrations declared to demand secrecy, or were many patents registered for the Reich?

A. I believe that the following figures will interest you. The figures which I give now, deal with Ludwigshafen, including Leuna. That is about one-third of Farben, considered from the point of view of patents.

Yesterday you gave the Tribunal some patent statistics. If one reads those carefully, one would see that Ludwigshafen and Leuna together have about one-third of the Farben patents. In the period from 1934 to 1944, for Ludwigshafen and Leuna, 6,810 patent applications were submitted. Of these, 118 became secret patents. That is a percentage of 1.7. You will perhaps also be interested in the fact that of these 118 secret

patents, 20 were issued before the end of 1939. You will see, therefore, that the majority of those 115 were issued during the war.

Q. Farben was bound by contracts with foreign companies to register patents in other countries, and to give information to the partners in the contracts.

Was that still possible under the legal provisions which you have described?

A. In general it was possible, because we were able to direct the judgment of the authorities concerned in such a way that as a rule permission was granted. Whenever we could reconcile it at all with our conscience, we directed the judgment of the authorities in such a way that permission was granted, and in most cases, as I said, that was possible. This, of course, corresponded to the policy of Farben; keeping our contracts was not only our tradition, but it would have been unwise to proceed in any other way. I should like to point out expressly that in general, our most important foreign partner was Standard Oil, which was at that time, in a similar position. I assume that I will be asked about this question later.

I should surely like to sum up and say that for both big enterprises, the conflict existed between loyalty to contracts, and the necessity to observe the instructions and the regulations of their government - their respective governments.

DR. FELCKMANN: Now, Mr. President, I should like to submit Document Book 2. It begins with Document 9, which I offer as Exhibit 9. This is an affidavit of Dr. Karl Holdermann in Heidelberg. It regards to the methods for keeping secret patents and applications for patents, and experiences in general; also cooperation with Vermittlungsstelle W, and interchange of experiences with foreign partners.

Dr. Holdermann, as No. 1 of his affidavit shows, has been director and head of patents since 1929, until the end of 1942. In No. 2, he describes how patent applications were kept secret, and then, in No. 3, he says "when the question of secrecy came up for the first time",

and he refers to attachments 1 and 2 of his affidavit, which are on pages 61 and 62 of the Document Book. These are the announcements of the patent office to the applicants, that they are obliged to observe the provisions of the law against treason.

The second attachment, on page 62, contains a reference to the fact that the applicant should contact the Military Offices.

Mr. Holdermann then goes on to describe how on the basis of this worry, the gentlemen who had to deal with these questions in Berlin, were informed of their duties which they now had.

On page 70, consultations with various Wehrmacht officials are described.

On page 71, I should like to refer to the report of the discussion of 13 September, 1935, which is attachment 4 of the affidavit.

On page 85, Your Honors, it says, "Dr. Mueller Gumbel says that it is important, extremely important, for Berlin to make arrangements of its own and to inform the Army Ordnance Office and the competent Offices of the Naval Command and the Reich Air Ministry about the same so that these offices can see that Berlin itself is doing everything it can to guarantee secrecy".

Now the following is important. "If these offices were not able to come to the firm conviction that secrecy was being rigidly guarded by Berlin, then the danger might arise that the Army Ordnance Office might become too anxious and advance the time of its supervision and undertake this for instance, right after the filing of the application, and without taking into consideration economic viewpoints, declare everything which might be considered to be kept secret."

Then on page 73 of the affidavit, there is a statement about the number of patent applications. Mr. von Knieriem has already mentioned this figure. The secrecy of the patent was in general demanded only after the outbreak of the war and then increased steadily. And then an important sentence: The question of compensation for losses which might have resulted from secrecy requirements never came up.

On page 74, Mr. Holdersmann makes provisions of English law, and on the second part of the page he gives the text of this notice to English patent registrants to the same effect as the notice given by the German government.

He also speaks of the position in France, and finally in the United States. On page 75 I should like to refer to the following paragraph:

"By reason of the law of 1 July 1940 the President of the United States of America was empowered to suspend the granting of a patent, thus to keep the invention secret, if its publication should be prejudicial to public security."

No. 5 again explains the position in Germany and in other countries. He says again that in the United States, - on page 76, second paragraph from the end:

"Compulsory license and compulsory exploitation as provided in the patent laws of all other countries are not known in the United States. On occasion attempts have also been made in the United States to have the compulsory exploitation incorporated into the law. Members of the Congress submitted drafts of laws for this purpose."

In No. 6, which follows, he speaks of the obligation to exchange experiences and the conflict with the German laws. He mentions the various contracts from which such obligations arose. Then he mentions some examples which show that Farben did not hold back in its knowledge.

On page 78, at the bottom, "I should like to remark that at the end of 1936 we had made an agreement with the British Industrial Plastics, Ltd, with regard to our experiences with Kaurit glue; the process of production was demonstrated in complete detail in Ludwigshafen, although this product, as far as I am informed, had great importance for airplane propellers. The Vermittlungstelle to which we submitted our inquiry, and which thereupon made further inquiries to its own satisfaction, informed us that no objection would be raised against the agreement, until

shortly before the outbreak of the war royalties were regularly paid to us."

A seven-member commission of the United States Firm of du Pont, in 1939, was shown the production of styrol and polystyrol. Then there are some statistics about patents in general. Farben patents, at the end of 1941.

From the attachments I should like to emphasize No. 6 which is on page 89. This is the instruction of 18 October, '35, which Mr. von Knieriem mentioned, about the dealing with patents and contract questions with regard to National Defense.

Attachment 10 contains the text of the notice in the English Official Journal of Patents in the year 1934.

The next document is No. 10, and I ask that you strike that. Document No. 11 will be Exhibit No. 10. These are extracts from a memorandum of the Prussian Ministry of Justice, 1933. Supplementary regulations on High Treason, Economic High Treason and Retroactive Penalty Laws.

On page 100 to 105.

I skip the quotations which Mr. von Knieriem has already made.

Now I come to the Farben memorandum drawn up by Mr. von Knieriem, which is Document 12. This will be Exhibit 11. That is on page 106 and following, dated 20 November, 1933, page 107. You will find the quotation about Military Treason. Since the concept of essential importance is too vague, this offers great difficulty. This is explained on the following pages.

Then on page 111, is given the position of Mr. von Knieriem on the suggestion of the concept of economic treason, and on page 112 and page 113, Mr. von Knieriem develops the idea which has been described, of how difficult it is to distinguish whether such an invention registration abroad will be a blessing or a detriment to the German National Economy.

On page 114 is the example which has been already given orally, and on page 115 too. Then again a reference to the special dangers of the retroactive laws, and the possibility of the application of analogy.

That completes Document Book 2.

Now I want to ask you about another specific point because your name was once mentioned in this connection, Mr. von Knieriem.

BY DR. PELCKMANN:

Q. The Prosecution has submitted a note as Exhibit 645, in Document Book 36. This is NI 7377. It deals with a discussion of basic con-

tractual questions, that on the occasion of the Aufsichtsrat meeting of the Anorgana, on the 23rd of August, 1943; from what time had you been a member of the Aufsichtsrat of the Anorgana, and from what time had you been interested in contractual affairs of the Anorgana, and in part, worked with chemical warfare agents?

A. After the death of Dr. Buhl, in the spring of 1940.

Q. The Prosecution has also submitted Exhibit 351, in Book 35, NI 5681, page 121 in German, and page 45 in the English, and another Exhibit 625, NI 7275, 136 in the German, page 64, in the English. These documents refer to Orgasit and your name is mentioned in them; you know the documents, Mr. von Knieriem. What do you know about the incidents connected with them?

A. These things happened 10 or 12 years ago, and do not seem to be of any very great significance event, and honestly I have only a very vague recollection. I do recall, however, the Orgasit and worked with Theo Goldschmidt.

Q. Let's refresh ourselves with the Exhibit 351. This is a contract of I.G. Farben, Frankfurt, with Orgasit, Berlin, of the 3rd and 22nd of July, 1935. What do you have to say about that?

A. I had no recollection of it, but I assume that this was worked out in the legal department at Ludwigshafen, specifically by Dr. Boeckler. I see that from the dictated note. It is possible that I signed this contract. I do not remember it. The contract is in no way unusual or significant. I do not recall participating in any negotiations.

THE PRESIDENT: This is the time for our recess.

(Tribunal in recess until 1115 hours)

THE MARSHAL: The Tribunal is again in session.

DR. MELTE: Dr. Walte for Hoorloin. Mr. President, may I be permitted to make a short statement? This morning at the beginning of the session the Prosecution made a statement in regard to Hoorloin Document No. 79, Exhibit No. 71. You, Mr. President, have also made a statement about this document and if I understood the translation correctly you stated for the Tribunal that parts of this Koenig affidavit that I submitted had been improper and inadmissible. You will understand that this statement forces me before I make any further negotiations with the Prosecution, to make a short statement for the record in order to avoid any misunderstanding. I repeat, in the case of this document we are not concerned with an affidavit that I took. When I was in Leverkusen I asked Dr. Koenig to give me an affidavit on the basis of his knowledge. I am now speaking of Document 74 of Book 3, on page 66. When I asked him Dr. Koenig told me that he had been interrogated at Frankfurt by Mr. Minskoﬀ and by Mr. von Halle and that he was waiting for a draft of an affidavit that was supposed to be sent to him. I did not ask him anything further about this matter and at the beginning of January 1948 I received what is now Document Hoorloin No. 79 through the mails. When I asked him Dr. Koenig then explained to me why he was sending me this document, that he had submitted this document both to the Prosecution and to myself and that this document contained nothing but what he had stated in answer to questions put to him by Mr. Minskoﬀ and Mr. von Halle. If there is anything contained in this affidavit considered improper by the Tribunal or considered inadmissible by the Tribunal then I can only say if Dr. Koenig spoke the truth, these are the answers to the questions of the Prosecution. I, on my part, do not want to assert that the Prosecution has asked the witness any questions that were immaterial or improper. You may be assured that I shall be glad to comply with the request of the Tribunal and that I shall endeavor to be an honest mediator between the Prosecution and the affiant Dr. Koenig.

THE PRESIDENT: Dr. Helte, ---

DR. HELTE: One more sentence, please, Mr. President, which I consider important? I believe that the Prosecution should give me the short-hand notes of the interrogation of Dr. Koenig in Frankfurt/Main and that on the basis of that record it shall be very easy to find an understanding with Dr. Koenig and with the Prosecution.

THE PRESIDENT: Dr. Helte, permit me to say that when commenting on the document the Tribunal certainly meant no reflection upon your integrity or honor or ability. I think that I would personally go this far; that I think we could trust your own good judgment as to what would constitute a proper affidavit to be submitted to this Tribunal. I think if you had been preparing this affidavit in the first instance perhaps we would have had no such problem as we have now. Undoubtedly the whole trouble arises with the fact that the witness did prepare his affidavit on his own initiative and used his own judgment as to what would be proper evidence...It would have been much better if he had relied on some such counsel as we regard you, then I am sure we would have obviated all of this trouble. Now, we get to the suggestion that I made this morning that you consider the matter of having the affidavit revised because we feel quite certain that if you would assume that responsibility we would eliminate all this trouble. The Tribunal is unconcerned as to any controversy between the witness and counsel for the prosecution who may have had interviews with him in the past. We are only concerned in having a simple direct statement from him as to facts within his knowledge or opinion which he is entitled to express as an expert that will help us resolve the questions that are before the Tribunal. I may say further that in offering the suggestion that perhaps one way out of the dilemma would be for you to prepare a new affidavit was only made in fairness to you because if we undertake to eliminate the parts of the affidavit we regard as objectionable it may leave the remaining part in a situation that would not be fortunate from your standpoint. The context might be so disturbed as to leave the document in a bad situation. As to the suggestion that you make

with reference to counsel for the Prosecution turning over the notes of its previous interrogation of this witness, that's a professional matter between you and counsel for the Prosecution in which the Tribunal will not inject itself. You may do one of two things; you may wait until the Prosecution has prepared a motion to strike out parts of the affidavit and entrust the Tribunal to act on that motion or you may after sufficient deliberation withdraw the affidavit and submit a new one. If you do withdraw the affidavit and submit a new one we shall be very, very confident that the affidavit that you submit will be acceptable subject, of course, to whatever objections the Prosecution may have to make with reference to the competency or materiality of the contents. I think that is sufficient for this time and take your time and determine your own course of action. We were attempting to be helpful to you in offering the suggestion that we made.

BY DR. FELCKMANN :

Q. Herr Von Knieriem, we just wanted to talk about Exhibit 625. That is in Book 35, on page 64 of the English, page 136 of the German. You looked through these documents. I assume, may I say once more, that in the letter of the firm of Goldschmidt A.G. of 10 March 1938, directive to Farben, they referred to a letter of Farben of 5 March 1939. This letter is missing in the document that has been submitted. From the reply to Farben of 10 March, it can be seen that Farben expressed the request to be represented in the Aufsichtsrat of Orgaxit GMBH. There is one further letter of the Farben industry in Ludwigshafen by the legal department, Dr. Boeckler, of 12 March 1938, to Dr. Goldschmidt personally. This letter refers to Goldschmidt's letter of 10 March 1937, according to which Farben's request for the representation in the Aufsichtsrat of Orgaxit has been rejected. This letter of 12 March is signed by you, Mr. von Knieriem, on behalf of Farben. Do you remember these events?

A. I have only a very vague recollection that I signed such a letter at one time. I believe it was supposed to be directed to Mr. Goldschmidt personally. I never had anything to do with Mr. Goldschmidt about these affairs, and never had any business relations with him. However, I know him socially and that may perhaps be the reason why it was sent to him personally.

Q. In the letter of 12 March a detailed discussion is suggested, because this, as you say, was not possible to be done in writing. Did you participate in such oral discussions?

A. I believe not because otherwise I would remember it. As far as I know now, Farben did not receive the representation in the Aufsichtsrat of the Orgaxit.

Q. Did you know at that time what products in final analysis were being produced by Orgaxit with the use of Farben processes?

A. I don't think I knew it at the time. As far as I know I was informed about the connections in the chemical warfare field only when

in 1941 I entered the Aufsichtsrat of the Anorgan when this was the beginning of my interest in the contractual relations of Anorgan.

Q. I now turn to the charge of the prosecution to the effect that Farben, with its numerous cartels, had a possibility to weaken the economic power of potential enemies in order to be able to prepare a future war of aggression. This point is given a lot of space in the indictment and as I said already in my opening statement, I shall be quite brief in answer to this point — as brief as possible. First of all I should like to ask you, Mr. von Knieriem, what are cartels? Is the same meant by the word cartel in the United States and in Germany?

A. According to German and continental conceptions, cartels are mergers and agreements for the arrangement of production and sales. The American definition apparently includes much more, and there the word cartel seems to comprise all those arrangements which might hamper free competition in some way or other, and which are therefore in contradiction to the anti-trust laws. Contracts are apparently also termed cartels in America which constitute an abuse of the patent monopoly. In this borderline territory between what is the permissible patent monopoly and the prohibited cartel monopoly there arise many difficult questions and serious doubts. When, for instance, we concluded our large contracts with Standard Oil, a recognized authority was consulted. This was John W. Davis, the former Solicitor General and Ambassador in England and the presidential candidate against Hoover. We discussed these matters with him at the time and nevertheless Standard Oil combination was later attacked because it allegedly violated the anti-trust laws.

DR. FELCKMANN: The interpreter perhaps should consider that the expression "zusammenschluss", mentioned has been translated with merger. Merger is supposed to be a fusion and in this sense perhaps it should be translated by combination. Thank you very much.

BY DR. FELCKMANN:

Q. The prosecution, under paragraph 51 of the indictment, states

that the number of Farben cartels amounted to more than two thousand. We are not concerned with the exact figures here, but I should like to ask you what you have to say to that.

A. At the time of the German collapse there were 1700 agreements listed in the Central Agency for Agreements and contracts. Yesterday I explained that not all contracts had to be sent to the Central Agency, only those contracts in which some conflicts might be possible. But in this category we must put the cartel contracts, so that one might start from the assumption that all cartel contracts were registered with the Central Agency for Contracts. It seems inconceivable to me that the larger amount of these 1700 contracts were to have been cartel contracts. Certainly even if the most liberal American interpretation is given to these contracts. This number of 200 seems to be exaggerated to me, if I may add this.

Q. Are cartels a form of an economy that was used especially by German associations?

A. No, that is not true. The cartel contracts which have been prohibited by the Sherman Act in America, are a permissible form of economy in all other countries with the exception of Norway. It is true, however, that the number of German cartels of Farben and the number of cartels in general in Germany is rather large. But there are special reasons for this. Germany is poor in raw materials and in food. It can not afford a completely free economy in some fields. Unless cartels and syndicates are formed, the State would have to intervene. Let us take the case of the nitrogen fertilizers. Nitrogen fertilizers are extremely important for food and agriculture. There are various types of nitrogen fertilizers. All are needed because every type is best for some particular soil. If as much food is to be produced on German soil as is possible, none of these types can be spared. All of them are needed. Some of these types, however, are more expensively produced than others. The farmer won't buy them because he doesn't buy any nitrogen fertilizer that is more

expensive than the one his neighbor uses. The fact that his soil conditions are different from his neighbor's he does not understand. What would happen now if nothing was done and everything was left up to free economy. The expensive nitrogen fertilizer would not be bought, and as a result it would not be produced, and overall food and nutrition would suffer.

In this instance a syndicate, whether a cartel or not can be of assistance. A certain system can be found according to which the manufacturer of a particular expensive nitrogen fertilizer might be granted some subvention at the expense of the other manufacturer, or some such arrangement. We don't have to worry about details. With this example, I want to show that in such cases either the State, or a cartel of the manufacturers can create an alleviation. In 1919, already, a Reich Monopoly for nitrogen fertilizer was to be created. The manufacturers of nitrogen fertilizer of those times didn't like this. They wanted to prevent this development towards a Nationalized Economy. As a result they created the Nitrogen Syndicate, which has already been mentioned in the course of these proceedings. The circumstances in Germany at the time were such that we had a law according to which private enterprises could be forced to join a cartel, or to conclude cartel agreements. It is quite interesting to compare these different attitudes in America and in Germany. Cartels are prohibited in the United States, even punishable. In Germany there is a law according to which some one can be forced to join a cartel.

Q Were the foreign cartel agreements of Farben concluded with a deliberate policy, and was this discussed in the Vorstand?

A No, certainly not. One must understand how such a cartel contract is concluded. A suggestion emanates from groups of business men, either of Farben, or of other enterprises, at home or abroad, on some point about which a reasonable private industrial arrangement is to be made. Then these people would meet and negotiate, and try to find a solution. It takes weeks, sometimes months, and then after that has been done, the lawyers draw up the contract in a reasonable way, according to the situation as it existed. When this matter is viewed subsequently, it will sometimes be a cartel agreement, according to German ideas, sometimes it may be a cartel according to the American ideas, and sometimes it may be perhaps no cartel, even according to the American interpretation, but that case seems to be

very rare.

Q On this point the Prosecution has talked about so-called cartel contracts. These are mostly contracts which provided for a technical cooperation together with exchanges of experiences, for instance with the oil executives. Why were such contracts concluded?

A They were concluded because they guaranteed the quickest possible introduction of technical progress, and because they promoted the quickest technical development. For instance, as early as the summer of 1939, there was a combination which was arranged in the field of Catalytic Refining between the largest oil companies of the world which knew the oil field best, and Farben, who knew the chemical processes of oil refinement best, and a few large firms in the United States, which were the top ranking specialists in that country for this field. One wanted to exchange experiences very widely, and it is, of course, quite clear that when such a group works together, and if everyone gives to the other what they have to give, then results are achieved most quickly, but this combination may have been considered a cartel also. Therefore the cartels as such have a certain benefit at times. I believe that during times of need, this will be recognized as such in the United States also. That is to say, it will be recognized that a cartel can be an instrument which develops a technical process most quickly. I believe I know that in June 1942 a law was issued in the United States, according to which the regulation of the Sherman Act didn't have to be applied if the interest of the National Defense required this in regard to some particular speedy development that was needed.

Q Did Farben in such cases observe their contracts which obligated them to exchange experiences even after 1933?

A It was not my function as a lawyer to transmit the "know how" of which I didn't understand anything myself, but I didn't have the least doubt that Farben always proceeded in a completely loyal manner. This question will be discussed at great length in the course of this

proceedings. I want to emphasize here that since 1933 the attitude of Farben towards their foreign cartel partners didn't change at all. As I already explained previously, in view of the regulations regarding treason, from a certain point onwards, Farben had to ask, but as I already stated, Farben was mostly given permission, I believe you could almost say always, to exchange these experiences. I already stated, I believe, that so far as I know, Standard Oil was in a quite similar situation, and that they conducted themselves just as loyally.

Q Did the so-called cartels have anything to do with political propaganda, or with collection of strategic information?

A I don't know the least about this, but I am convinced that it is not true.

Q As a so-called incriminating document, the Prosecution submitted Exhibit No. 888, in Book 48, it is Document No. NI-11197. It is a letter to the Reich Ministry of Economics in regard to the Chemnico. Did the Chemnico have anything to do with conclusions of contracts?

A A certain Dr. Hochschwandter belonged to Chemnico. He was a technical man, and he was, so to speak, a liaison agent, between Farben and the Standard Oil, when exchanges of experiences took place. You must take into account that Farben always had a large number of technical experts in America. They had to be introduced to Standard Oil by somebody, and this was done by Dr. Hochschwandter, and Standard Oil acted similarly in Germany. They also had people constantly working in Germany, solely for the purposes of keeping in touch with Farben, and to help occasionally in questions of this nature. Dr. Hochschwandter had also on other occasions some work to do when contracts were discussed, or when license negotiations were concluded. Then your question can be answered by saying that occasionally Chemnico had something to do with the conclusions of contracts and patents and so on.

Q In No. 56 of the Indictment, the Prosecution asserts that one particular patent had prevented an important economic development in the United States before the war, and that that particular patent had

been controlled by Farben. The Prosecution didn't offer any proof for this. Their general assertion to such intentions of Farben was not withdrawn by the Prosecution. I should like to ask, is such a thing possible at all?

A The facts which the Prosecution presented have not been described correctly. It was quite different. But that is not the point in question. I understand your question to mean that quite apart from this fact, I should state whether it was possible. If I am asked whether any single foreign patent could make a necessary economic development impossible in America, then I have to say theoretically that is possible, and I'll have to answer the question in the affirmative, but that is due to a peculiar American Patent Law System. All the other countries of the world, so far as I know, provide for a possibility in their patent law that even during peacetime, when economic reasons make it desirable, obligations to grant licenses might exist against the will of the person holding the patent. However, these regulations do not exist in the United States. That is strange. For America, as such, is opposed to monopolies, but because of the fact that this regulation does not exist there, due to this strange patent law, their patent monopoly was strengthened.

Q One last question on this detail. The Prosecution asserts that certain German patent holders in the United States, and especially Farben, exploited their patent rights in the United States ruthlessly. What can you say in this connection?

A I can not answer this question on such a general scope, but I should like to point out only quite briefly one fact which, I believe, is not generally known. I had already stated a short while ago that it was peculiar that the patent monopoly had been strengthened so enormously in the United States, although the United States was really opposed to monopolies, and, I pointed out previously that this was done because the United States does not know of compulsory licenses, but on another point, especially in regard to chemical patents, the United States strengthened patent monopoly enormously and unusually. In the field of chemistry there are two ways of protecting patents. There is a weak and a strong system. The weak system consists of so-called process patents; the holder of a patent can only prohibit that any particular material is produced according to his process; it may, however, be produced according to another process by anybody. That is the weak system. The strong system are the so-called product patents. Here the holder of the patent can prohibit anybody to manufacture this particular product, even according to other processes, this product may not be produced. It is completely frozen. United States, Germany, Switzerland, and Holland —

Q Not the United States, only England.

A Germany, England, Holland and Switzerland, all have the weak system to protect the patent products in the chemical field. That is, the process patent. The United States has the strong system, the product patent. That has an economical consequence. Although the United States is opposed to monopolies, it has created a strong patent monopoly in the chemical field. According to International regulations, the citizen and the foreigner in any country has the same position. In Germany, therefore, an American has the exact position that is held by the German, and, in America a German has the same legal position as an American. Germans as well as Americans, therefore, have a strong system of patent products in America, and both have only the weak system in Germany.

From this the following results: If a German enterprise has obtained a predominating patent position in the United States, then this has a very strong effect, because the monopoly in the United States has been so particularly strengthened. If it is so strong, a monopoly is less comfortable for the competitors than a weak monopoly. Then sometimes the fact that patents belonging to Germans in the United States are particularly severe, may have something to do with it. I ask your forgiveness for having explained these general things, but I believe that they may be quite interesting as a general background, and, I thought perhaps they were not generally known.

DR. PELCKMANN: We are now going to present the details in regard to this background, but my colleague Dr. Silcher will continue the examination later. Mr. President, may I ask to have a recess now?

THE PRESIDENT: The Tribunal will recess until 1:30.

(Nonn recess until 1330 hours, 6 February 1948).

AFTERNOON SESSION

(The Tribunal reconvened at 1330 hours, 6 Feb. 1948)

DIRECT EXAMINATION (Continued)

AUGUST VON KNIRIEN, Resumed

THE MARSHAL: The Tribunal is again in session.

BY DR. SILCHER:

Q Mr. von Knirien, as you and the Defense counsel discussed previously, the document in Counts 51 to 53 charges Farben with collaboration with the Nazi Government in preparing a war of aggression, including the use of international cartel agreements as a military weapon to weaken other countries. This brought a tragic impediment in the development of strategic industries in the countries which Germany intended to attack.

As one instance of this, the Prosecution mentions, among others, that in the years 1927 to 1929 and 1930--that went long before the Third Reich--

MR. ANCHAN: Your Honor--

THE PRESIDENT: Let him complete the question.

MR. ANCHAN: I am sorry.

BY DR. SILCHER:

Q The contract was concluded between Farben and Standard Oil of New Jersey. The Prosecution has offered Exhibit 942 and 943 in this connection.

That is, Mr. President, Book 42, English page 1 and page 26. Also Exhibit 1012. That is, Mr. President, 43, page 282, where Francis Biddle, Attorney General, and Wendell Fisch, Assistant Attorney, testify that 1929 was the critical year in the offensive of German firms against the United States. And in this connection they mention, among others, Farben's agreement with Standard Oil.

Did you have anything to do with the creation of this contract between Farben and Standard Oil, and are you well-informed about this?

MR. ANCHAN: We have no objection to the question as finally put.

The objection we want to state is of counsel's practice of elaborate recitals stating what the Prosecution-- Our objection is to counsel's elaborate, argumentative recitals as to what the Prosecution is charging in the evidence. And since this particular Defense counsel is beginning his examination, we would want to make this general objection and observation at this time.

THE PRESIDENT: That objection will be overruled.

Counsel should not, by indirection, undertake to testify or to import facts to the Court; but it is not improper within reasonable limitations for an attorney who is about to question a witness to direct his attention to the subject matter to be inquired about. After all, this is a problem of reasonable application so far as counsel is concerned, and sound discretion so far as the Tribunal is concerned.

Since this counsel is just now starting to interrogate the witness, we do not deem it improper in this instance for him to direct the attention of the witness to the scope of his inquiry.

As we said before, that should not be abused. It should not be used for the purpose of putting counsel in the position of testifying or appraising evidence.

Mr. Defendant, if you understand the question, now, after the interruption, you may proceed to answer.

DEFENDANT VON KNIESER: Yes, I did participate in drawing up this contract. I had a very important part in the negotiations and in the formulation, and for this purpose I was in America for weeks at a time.

Q Then please describe as briefly as possible, but so that we can get a true picture of the situation, the background, origin and the essential contents of this contract, and this "marriage", as I might call it, between Standard Oil and Farben.

But, first of all, one other question. Was the character of the oil policy of Farben definitely of a private business nature?

A Yes.

Q Do you consider the agreement with Standard Oil, of which we are

speaking of right now, a typical and good example of this private industry character of Farben's oil policy?

A A very good example.

Q Then please begin your description. First of all, up to the time when the first contract was concluded in 1927.

A In the year 1924 the Badische Anilin and Soda Fabrik, one of the founder companies of Farben, began work in the field of hydrogenation of crude oil and coal. That means the treatment of crude oil and coal under high pressure with catalysts and the use of hydrogen. This work was the logical development of the work of the Badische in the field of ammonia synthesis which led to the well-known Haber-Bosch process which has been repeatedly mentioned here.

On both processes one worked under high pressure and with catalysts. Bosch remarked that this was probably the great and most difficult problem still to be solved, and he seized upon it passionately. Certain preliminary work had already been done in this field. The German chemist Bergius worked in this field and had taken out certain basic patents throughout the world. These patents belonged to a Dutch company which was under the control of the Royal Dutch Shell. At this time the Badische Anilin and Soda Fabrik had the I.G. cartel, which was very closely connected at that time, acquire control of this Dutch company. In 1925, approximately, Farben--for the merger had taken place in the meantime--discovered that the problem would be solved but there was still a great deal to be done. It was now found that Farben needed the assistance of an oil company. They had to be better informed about the customary methods in use up to then by the oil industry. They also had to be informed about the cost of the previous methods in order to have a basis for comparison, and finally they had to be informed more than they were about the needs of the consumer, as for the different qualities. According to the new process of Farben one could produce all kinds of products and each of these products could be produced in different qualities. One had to know what qualities were needed and

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for what qualities a high price could be charged. Otherwise the danger would have existed of working in the wrong direction and the production of products in qualities which were not needed.

(continued)

A. Therefore, cooperation with an oil company was necessary, but there was no oil company in Germany. Germany has no crude oil. I.G. Farben now considered the big oil companies and came to the conclusion that the most suitable one would be Standard Oil of New Jersey. It was the biggest, the strongest financially, in the United States, and it was probably the one with the highest technical development, and certain contact had already been established a few years before, -- that is, personal contact through the Du Pont Company.

Farben now invited Standard Oil men to come to Ludwigshafen. A large number of them came, headed by their president, Walter Teagel. We showed them our equipment which was producing on a small scale at that time and explained everything to them. They were very much impressed. They realized that something was going on here that might change the oil industry throughout the world.

They acknowledged the big problem of making gasoline out of coal. After we had talked for a few days, the president made a very reasonable suggestion, that is, the suggestion that in the entire field of crude oil hydrogenation and coal hydrogenation, the whole world should collaborate. This was too much for Farben at the time. They wanted it to limit collaboration to the hydrogenation of crude oil, and second, to America. Then this counter-proposal was made Walter Teagel was a little disappointed. I remember that he said, "We are suggesting a marriage to you, and what you suggest is scarcely an engagement." But we insisted, and I went to America and negotiated with Mr. Howard about this first contract. He drew up a contract which was signed by the two companies.

Q. What year was that?

A. That was in 1927.

Q. Was this contract been introduced by the Prosecution?

A. No, and I do not believe that I should waste the time of the Tribunal in discussing it, because it was superseded two years later.

by the big contract.

I should scarcely like to remark that now there was extremely close technical collaboration between Standard and Farben. Technical experts of the two companies visited each other, and they became acquainted with one another, and became good friends. Further development proceeded well, but it was soon discovered that the basis of collaboration was too narrow.

I said before that it was limited to hydrogenation of oil. Coal had not been included, but that was not a good thing, because the technical experience and know-how use of Farben was also of value in the hydrogenation of coal. Consequently, we believed that closer collaboration had to be established, and that it had to be extended to include coal.

On a second point too, the first contract was too narrow. It was limited to the United States. One can do a thing like that with patents, but not with know-how, which is not protected. If one once had such know-how, in one's head, one cannot forget it, if one is working in a different country. Men of Standard Oil who received this know-how only for the United States, could not forget it, if they went to the Dutch East Indies, and both of us came to the conclusion that closer collaboration was needed for the whole world, and that it should be for the hydrogenation of crude oil and coal.

Now there was a big difficulty. If two such big companies get together it can only be on the basis of a quality that is 50-50. That is a very good relationship, if the interests are the same. It is, however, a very poor relationship if the interests are not quite the same.

The interests were the same in the field of crude oil hydrogenation, but as for the hydrogenation of coal, the interests had to deviate. Farben would, of course, have been interested in having the process of the liquefaction or hydrogenation of coal applied as widely as possible. On the other hand, Standard Oil's main business was always the export of gasoline, lubricating oil, etc., for the whole world. If the

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continental countries, which have coal but no oil had liquified coal on a large scale to make gasoline, then, of course, Standard Oil would of necessity have lost its markets.

The same was true in other countries, South Africa, for instance, which also has a great deal of coal but no oil. We thought this matter over for months and finally we made the following suggestion to Standard Oil. We said that we would be ready and willing to turn over all of our interests in this field in the whole world to them, with the exception of Germany, of course.

In other words, we were ready to give them all of our patents, all of our experience, present and future, for all of the world, with the exception of Germany, and they were to give us one large payment of money. Farben had had large expenditures in the development of this process, so large that it was a little too much, even for Farben. I do not know any exact figures but it may have been about 200 million marks.

Standard Oil thought the matter over and came back with the following precise suggestion. Farben was to give to Standard Oil all of the hydrogenation processes for crude oil and for coal; all patents present and future; all of the know-how present and future, and in addition, all other processes suitable for the working of crude oil in the customary main production of the oil industry such as gasoline, lubricating oil, etc.

In addition Farben was to have I.G. Chemie, Basel, turn over to Standard control of the Dutch company which had certain basic patents which I mentioned before. Standard in exchange, was to give the following: 600,000 shares in their company, in five annual payments of 120 thousand dollars each, or if the payment was not made in installments, but all at once, it was 548,011 shares, that is with the discount deduction.

The value of these shares was at that time about 30 million dollars, - 30 to 35 million dollars. The rate varied considerably. Also Standard

was to give Farben 20 per cent participation in future royalties.

Farben approved on principle, and asked for only two additional matters which Standard immediately granted: First, aid in the German market, that is, the German processes of products of the hydrogenation process in Germany were to be sold by the distributing facilities of Standard in Germany, and that they were to have priority over imported products, that is, imports were to be brought in only if the German supply could not cover the demand.

Also Farben wanted protection against the following dangers. Farben was so to speak, opening the gate to chemistry for Standard, and if this company, which was on a high level technically, with its great financial resources, had now entered the field of chemistry, in other fields of oil, that would, of course, have been a serious drawback for Farben.

Standard acknowledged that fact and agreements were reached on the German sales and on this matter of protection in the field of chemistry, which was called the Division of Field Agreements. This has been introduced by the prosecution.

DR. SILCHER: I want to make a remark about the translation. Dr. von Knieriem, you said the funds which Farben had spent in coal liquefaction, the sum of approximately 200 million, — you said that was a little too much for Farben? It has been translated "a little too much" and that is not quite right.

A. I said it was a great deal even for Farben.

Q. You spoke of the German sales contract which was a part of this whole deal. Has this document been introduced?

A. No, and I do not think we need to discuss it.

Q. Then will you please go on and describe the contents of the contract, on both sides?

A. Standard Oil gave 546,011 shares, with a value of about 30 million. Standard Oil gave 20 per cent of the royalties. Standard Oil was ready to conclude a contract with us about the German sales territory and was ready to give us protection in the field of chemistry.

Farben gave its process in the field in question for the whole world, patents and unprotected know-how, present and future, and also Farben had I.G. Chemie Basel, with which it was closely connected at the time, gave control of a Dutch company to Standard. This Dutch company had certain basic patents.

Q. What was the outer form of these extensive and varied agreements?

A. The outer form or set up, was extremely complicated, probably the most complicated thing I have ever had to do in my life. I do not believe that I need go into all of these details, and I do not want to waste the time of the Tribunal. I speak of this only if I should be asked about it. However, I should like to say very briefly what the difficulties were. The contracts which have been introduced by the prosecution are all correct, and they were signed but they are not quite complete, and one does not understand, for example, why suddenly four parties are spoken of when actually there are only Standard and Farben involved.

One sees nothing in them about the turning over of stock. The reason for the difficulty lay in the source of things; for example, Standard Oil of New Jersey was a holding company which had tax privileges in the industry of New Jersey. These holding privileges could not be endangered by concluding contracts which are not customary for holding companies.

Then secondly, Standard Oil had some old contracts from which certain experiences had to be passed on to others, free of charge. That would have included the ones for which they were paying us so much money; that also made difficulties. Then we, of course, had all kinds of considerations regarding taxes, that is, how we would handle this large payment of money in Germany.

Then Standard Oil of New Jersey had to issue new stock so that they could give this stock to us, and that also made difficulties, for if they gave us stock, it had to be stock which was on the market, and all of this was very difficult and led to a very complicated setup, but I do not believe that I want to say any more about this at the moment. That would be going too far.

Q. Were there several contracts outwardly independent, but legally dependent, part of which have been introduced in evidence here?

A. Yes, that is true, and consequently the picture is not without certain gaps, but I believe that this Tribunal should not be burdened with a full presentation of the whole affair. That would go too far and would take a great deal of time, and if I am to be asked, I believe I should limit myself to what I have said.

I have said only the most important things, only things which are of interest here.

Q. Is there anything important still to be said about any of these main contracts which have been introduced here?

A. Yes, regarding one of the contracts introduced here, I should like to make a few brief remarks, because the Prosecution has made some

remarks here. That is, the contracts, the Division of Field Agreements, the Prosecution implies that this was the basic contract; in a sense, a world cartel between the two big countries. In a way a Division of Oil for Standard Chemistry for Farben, for the whole world. That is not right in that form.

The expression, "Division of Field Agreements" has been misunderstood. The preamble of this very brief contract does contain a reference to the fact that Farben acknowledged Standard's outstanding position, preeminent position in the field of Chemistry, but one must look at the contract itself, because that is the essential thing. It is very short, only one and one-half pages.

JUDGE MORRIS: Could you give me the exhibit number of that contract?

DR. SILCHER: 943; Book 42, page 26.

JUDGE MORRIS: Thank you.

BY DR. SILCHER:

I think you may continue.

A. The contract is only one and one-half pages long. It regulates the cases for either Standard or Farben, should there be a new chemical development connected with oil. This, in other words, deals only with chemistry. If it were really a division of the world in the oil and chemistry field, then one would expect a few more paragraphs dealing with the case, when one of the two partners goes into the oil business, but they are not regulated, and the reason is very simple.

On the same day when this contract was signed, Farben had given all of its patents and processes for the chemical working out of oil. It could not go into the oil fields. It might have been able to buy oil wells or something like that, at most, which would have been senseless if or they would not have been allowed to work up the oil, and that is the reason why Standard never demanded of us any corresponding obligation.

The Division of Field Agreement, is an agreement which was actually only to the advantage of Farben and was demanded only by Farben,

Q. Now did Farben in connection with these negotiations and agreements, consult the German government in any way?

A. No, not at all. He considered that a purely private matter which had nothing to do with the government.

Q. The Prosecution now charges Farben with failing to carry out these agreements with Standard Oil. During the entire period of validity of the agreement, the Prosecution contends that Farben was in constant touch with the Nazi government, - and apparently the time of the seizure of power is moved up to 1929, - Farben deceived Standard Oil, and contrary to the agreement failed to make its own contributions, to pay its own considerations, and especially failed to turn over experience. Did you have you anything to do with the execution of the contracts, especially the exchange of experiences?

A. No, it wasn't possible according to the nature of things. The experience has to be turned over by technical men. Lawyers have nothing to do with that but one must not imagine that some secret is reported at the desk telling of experience of the chemical industry is quite different. There must be dozens of technical men from one side who go to the plants of the other side and stay there for months, sometimes for years, sometimes permanently and must work there and help them and the men of the receiving side must go to the plants of the other party and learn in these plants. That's how it is, and only technical experts can do that. Not lawyers.

Q. But do you not have any impression about the development of the relationships between the two companies in this respect?

A. I assume that my technical colleagues will have a great deal to say about this. For myself I can say the following: I always had the impression that a frank, free and intimate collaboration took place and that mutual collaboration was excellent. Dr. Teagel used the expression "marriage" and I believe that this was a model marriage and I never saw any trace of any deliberate holding back on the part of Fabcon.

Q. Was this not sometimes interfered with because of the law against treason which you mentioned this morning?

A. That did happen sometimes as I already said but it was similar in the case of Standard Oil.

Q. Can you give me any examples?

A. I recall a conversation with Howard of Standard Oil. I remember it very clearly. It was about 1935. We had just exchanged "know-how" on tetraethyl lead but we had received it very late. He had to wait a long time. When I talked to Howard I told him our technical men were surprised that it took so long and he said to me "we first had to talk to the War Ministry in Washington and they didn't want to at first but later they gave their permission."

Q. Your point of view is that Fabcon did fulfill the contracts

loyally as far as turning over of experience is concerned but you said yourself that they had to consult with German authorities because of the laws against treason. You pointed out and the prosecution's witnesses have confirmed this, that Farben as a rule was able to get this permission. Was Standard Oil informed that this difficulty existed and that in exceptional cases Farben did not perhaps get this permission or perhaps only got it later after negotiations with the German authorities?

A. They were certainly informed about that. That will be seen from the meetings that we will present here but I should like to tell about one conference which I recall very well but first of all I must make a preliminary explanation. As a rule the technical world learned of a new invention by the publication of the French patent. The French patent is printed very early without being checked and the technical people will read these things generally at first in the French patent. Now, according to all the contracts and agreements with Standard we had to give them our know-how in the development at a very early stage before the French patent was printed. Now, the men of Standard Oil once said to our technical experts that a certain invention had been received by them only at the moment when they read the French patent. Then the case was explained to me and Howard came to Germany shortly thereafter. I told him about it. I said, "we have difficulties." "We have to consider the authorities in many matters. Mostly I can say almost we do but sometimes it takes a little time." In this case which we were talking about we got the permission rather late that's why it took so long. I remember this talk because it took place in Berlin. Our other talks, however, were at Ludwigshafen. While I was talking to him, Howard was walking up and down in our office. He said only "all right." He knew very well that we treated him and his company loyally.

Q. As you tell me during the entire time from 1930 to the Spring of 1940 you saw Howard quite frequently. Did you not talk about these

things frequently and did Howard not say to you that in his opinion Farben from time to time had not observed the terms of the contract.

A. Since we two were the authors of the contract we frequently talked about it. Howard never complained to me about any disloyalty attitude of the Farben. I always had the impression that he was just as much satisfied with our collaboration as we were.

Q. Would it have been possible in view of your relationship with Howard that Howard might have had complaints about which he did not speak to you?

A. No, I consider that impossible. We saw each other so often during those years, and we had so many business affairs to settle with each other, but, quite aside from our business connections we saw each other a great deal socially, too. We even went on vacation trips together. In view of our relationship with each other I must have been informed by him, I would have been informed by him if he had any complaints, and I must have noticed on the part of Farben, too, if there had been any deliberate holding back there. I had exactly the opposite impression. I had the impression of complete harmonious and fair collaboration.

Q. Now, the agreements of Farben with Standard Oil and their execution, did they interfere with development and research of Standard Oil or the United States as a whole as the Prosecution believes?

A. As far as I can judge, I am not an expert, exactly the opposite is true but my technical colleagues will have to speak about this subject. I believe that Standard Oil had enormous profits from collaboration with Farben. As I said just now Farben opened the gate to chemistry for Standard and helped it to a great extent. One may perhaps doubt sometimes today whether the technical progress made by the world in the last two decades has made humanity happier. If, however, one holds the view that technical progress is good and something to strive for, then I believe one can say the both big companies helped

one another and thus helped the countries and perhaps the whole world.

DR. SILCHER: Mr. President, I should now like to offer a few documents from Book III. First of all, page 122, which is the first page of this book, Document No. 13. I offer it as Exhibit No. 12. It's a report which Mr. von Knieriem worked out after the war for an American office about the contractual relationship between Farben and Standard Oil. This report is to confirm the testimony Mr. von Knieriem has just now given on the witness stand. It was prepared, of course, from an entirely different point-of-view than what of a trial of Mr. von Knieriem or other men of Farben. The two following documents Nos. 14 and 15 are connected. I should like to offer those as Exhibits 13 and 14. These are two letters from Mr. Lusky to Mr. von Knieriem. One is in the year 1946, the second from the year 1947. They are to show a confirmation that this report Exhibit 12 was prepared by Mr. von Knieriem for this office which Mr. Lusky headed at the time and that Mr. Lusky later carefully checked this report with the result that it was completely accurate. I should like to quote briefly from Exhibit 14. Mr. Lusky writes to Mr. von Knieriem --

MR. SPRECHER: Mr. President, I would like to start with Knieriem Exhibit 12, a report prepared by the defendant not shown to be under oath when introduced on behalf of the defendant. It seems to me it is somewhat different than a report where the prosecution offers it as an admission. I don't suppose I have to go into that. However, I might say if the defendant will now under oath state that the facts stated in Knieriem Exhibit 12 are true I think that difficulty could be remedied very rapidly.

DR. SILCHER: May I say a few words about that, Mr. President?

THE PRESIDENT: I hardly think you need to, counsel. We do not look upon this Exhibit 12 as in the nature of supplying evidence by affidavit or by statement. In the first place the witness testified with reference to this document and in the second place it shows that it is not an

affidavit prepared or a document prepared to be offered here in lieu of testimony. It shows on its face that it was a document prepared pursuant to some military authority. The objection is overruled as to Exhibit 12.

P. SPRECKER: Now, with respect to Exhibits 13 and 14; we think they are incompetent for the reason that they are not given under oath; but because we don't think it's about a crucial point we will not press an objection. The reason we state that is because we think that if we don't it may be unfair to the defense in the future because they may run afoul with respect to important evidence because of a basic rule which we think should be enforced if there is any contention about the matter.

THE PRESIDENT: What you mean is I take it, that you don't want your failure to object to be construed as a waiver?

MR. SPEICHER: That's all, your Honor.

THE PRESIDENT: Very well then, there's nothing before the Tribunal.

MR. SILCKE: The I may quote this document I intended to quote, this Exhibit 14 page 135. Mr. Lusk says to Mr. von Haerlen among other things that "you are a man of probity." He says "I have carefully examined the report" and then goes on to some detail about that and then he says "in no case did I discover any substantial inaccuracy or omission." As Exhibit 15 I offer Document 15 on page 137. It's an excerpt from the record about the discussion of I.G. men with Mr. Howard in February 1936 which also testifies to a case where Standard was prevented at first from giving Farben a certain hydrogenation process. This is another case, not the same one Mr. von Haerlen has just described from the witness stand. Mr. von Haerlen, the question which you were last discussing, the question of the technical advantage of collaboration for the two partners in the contract leads me to the internal work of Farben regarding the exchange of experience with Standard Oil which the Prosecution has offered as Exhibit 994 in Book 47, English page 87, German page 80. This exhibit here states that in the exchange of experience between Farben and Standard Oil it was predominately Farben which received. What about this?

A. The reason for this report was a lecture by the Vice-President of Standard Oil, Esalen, in New York at the end of 1943. This lecture was published in the Petroleum Times of 23 December 1943. Esalen explains in considerable detail that the technical warfare of the United States would not have been possible at this level if Standard Oil had not received the valuable experience of Farben. Standard Oil had obviously been attacked in America because of its collaboration with Farben. That was quite obviously the reason for this speech. This speech extremely and strongly explained the value of what Standard Oil received from Farben. Now, in the Spring of 1944 one day Eustofisch told me that this speech of Esalen's had become known

in Germany and that we had to expect official German agencies to learn of it. Both of us felt that this was a dangerous situation and that we had to consider the possibilities that we might be attacked for treason. This was the reason why a memorandum on the subject was worked out with Farbon. It was to be used in the event that there was such an attack on Farbon for treason. In this report of Farbon everything was listed that we had received from Standard Oil. It's possible that our private report was a little exaggerated in view of its purpose. I cannot judge this matter exactly, not being a technical expert I should merely like to remark that this private report was not finished. I believe that can be seen from the letters with which the Prosecution introduced it. The information was not completed for actually no such attack was made against Farbon, probably because of the somewhat confused situation in Germany in the year 1944.

Q. Was this matter really so serious for Farben?

A. We considered it extremely serious and I believe everyone will agree with us who realizes what the situation was. That was the time of the terrible air raids on German cities. The German population was living under the most terrible conditions. Now, this speech of Haslam's, which had become known in Germany, said the American air-raids on German cities were possible only because of the technical experience which Standard Oil had received from Farben. It also said the explosives which the American planes dropped on German cities can be traced back to certain inventions of Farben which Standard Oil received, that is, in the field of toluol. Finally, it said that Russia had won her campaign only because of technical achievements which Russia had received from America and which came originally from Farben. Now, just imagine our situation if this state of facts became the basis of an accusation by the People's Court.

Q. Did Farben foresee such results of its collaboration with Standard Oil?

A. No, of course not; but that is an unavoidable consequence of any international collaboration in a technical field. What one country gives another country in possession by way of technical achievements will be turned, in the event of war, against the country where it originated, and when that happens, then reproaches come and probably against both partners. Everyone is reproached by his own country. It was similar with Standard Oil, as we heard. Reproaches were made against Standard Oil too. But you must realize the difference. These reproaches against Standard Oil were raised in a civilized form of a hearing before a Senate Committee. But now imagine the situation of a German firm in 1944 before the People's Court. I don't believe I need say any more about that.

DR. SILCHER: Mr. President, I now offer from Book III, Document No. 17 which is on page 138. That is the speech which Haslam held at the end of 1943 in the United States which Mr. von Knorin has just mentioned.

THE PRESIDENT: Is there an objection to the offer?

MR. SPRINGER: Not to that, your Honor.

BY DR. SILCHER:

Q. Mr. von Knieriem, I now come to the subject of Yasco-Guss. That is the charge that in spite of contractual obligations Parben did not turn over Guss "know-how" in order to work on a future enemy of Germany. Are you specifically well-informed about the Yasco contract?

DR. SILCHER: Mr. President, I may say that the Yasco contract has been introduced by the Prosecution as Exhibit 945 in Book 43, page 48.

BY DR. SILCHER:

Q. Will you please answer the question, Mr. von Knieriem?

A. Yes. The contract was concluded in 1930. Howard and I discussed it and worked out the text and it was signed by the two companies.

DR. SILCHER: Mr. President, I now intend to ask Mr. von Knieriem to give us briefly the content of the Yasco contract. I believe that that will last beyond three o'clock. I believe it should not be cut in two. Therefore, I suggest that you take the recess now and perhaps end it a little earlier.

MR. SPRINGER: Mr. President, I think perhaps I could take us up to near three o'clock with some points I have about the last document and the next two, which I intended to make, if that will please Dr. Silcher.

THE PRESIDENT: Very well, we will hear you. Counsel, I am not sure that we get a clear picture of what you said you intended to do next. Since the contracts that you referred to are in evidence we assume, of course, that you will not take the time to have the witness detail the contents of the documents. The documents speak for themselves, unless it is something outside the four corners of the document that you intend to go into. It would seem to be quite apparent that your position is not very well taken here as to your intentions. Would you enlighten us a little bit as to what the scope of the testimony next to be offered by this witness is to be?

DR. SILCHER: Mr. President, I certainly do not intend to have him

repeat the contents of the contract, as you can do from the document. But we believe that to understand the contract, especially in view of the purpose for which the Prosecution introduced it, some explanation is necessary and that is what I intend to ask the witness.

THE PRESIDENT: Well, now, if the explanation is factual, as distinguished from argumentative, you certainly are entitled to make your showing. In other words, if you have in mind the background or negotiations that led up to the contract or what was done by parties pursuant to the contract, matters of that kind would be proper. The only thing I was trying to call your attention to is the fact that it would not be proper to reiterate the contents of the document or to have the witness testify to argumentative matters as to what the document means. I think you understand the distinction.

DR. SILCHER: Yes, quite.

THE PRESIDENT: Very well.

MR. SPECKER: Mr. President, when you asked me a minute ago about Enclerica Exhibit 16 — that is Enclerica Document 17 — I didn't want to make an objection at the time because the same objection runs to the next two documents likewise.

Now, at the time those speeches or releases were made — and I think to some extent that may have affected the book which later followed — Standard Oil was being accused during the war of having contributed to certain difficulties in which the United States found itself. Those statements were not made under oath at the time; they were made at the time when Standard Oil did not have access to the documentation which has since been laid before the world, and I don't think that they are competent evidence under the rules. What is more, I don't think that the Prosecution's suggesting that they are a considerable distance from good evidence could be construed as any effort to prevent these defendants from getting proper testimony from these gentlemen unless perhaps one of them should have died in the meantime, or something to that effect. And, therefore, we shall object.

on grounds of competency to Exierien Exhibit 16, which is Exierien Document 17, and to the next two documents.

THE PRESIDENT: Now, the ruling as to Document 17, Exhibit 16, will stand because we think it is on quite an entirely different basis from what you are presently saying with reference to Documents 18 and 19, and we will permit counsel for the defendant to make his own statement as to the theory upon which he thinks the latter two are competent after our recess.

We will rise for our recess at this time.

(A recess was taken)

THE MARSHAL: The Tribunal is again in session.

DR. MEYER (Counsel for defendant Gajowski): Mr. President, I ask that Dr. Gajowski be excused from attendance next Monday so that he may prepare for his appearance on the witness stand. I should be grateful to you if you would grant this application.

THE PRESIDENT: The request is granted.

DR. BORHALL (Counsel for defendant Tor Hear): I ask that the same privilege be granted to Dr. Tor Hear so that he can prepare his defense.

THE PRESIDENT: Very well. That request will likewise be granted.

DIRECT EXAMINATION (Continued)

AUGUST VON KNIERICH, Resumed

BY DR. SILCHER (Counsel for defendant v. Knierich):

Q. Mr. von Knierich, we have reached the Yacco contract. Describe to us, please briefly and in summary the circumstances and considerations of both parties concluding the contract, with special reference to the Yacco case?

A. I can put it quite briefly. The large agreement with Standard Oil of 1929 which was discussed previously a short while ago, founded a collaboration in the field of refining crude oil in the main products of industry, as gasoline, gas oil, lubrication oil, and so on. Processes which led to the manufacture of other products were not included, for instance, rubber synthesis would never be included.

Now, in 1930 this collaboration was to be extended to include all those processes starting from crude oil, even if they finally arrived in their finished form in other products than the main products in the oil industry. Thus, for instance, the production of rubber from oil would have fallen into this category, but not the production of rubber starting with coal.

A. Joint American Study Corporation was to be founded in the United States. The initials of this Study Corporation formed the word "Yacco". Both parties were to participate with fifty per cent each, and this corporation was to have the function of developing further chemical processes which

had been given to them in the framework which I have just described, and after they had been further developed they were to grant licenses to others. It had been specifically agreed that with the approval of Jasco the development might be undertaken with one of the partners at the expense of Jasco. Each of the two partners which developed a new chemical process was to inform Jasco and give an option to the other party to determine whether this had any interest for him. If the other party took up this option, then the development work was to be done in Jasco, unless one of the partners in agreement with Jasco decided that he should himself undertake development at the expense of Jasco.

Now, the last point. If it had reached the stage that the development work had been finished in Jasco so that the process was ready to be licensed to others, then the party that had originally brought this patent should transfer them to Jasco to Jasco, and that, of course, included all the "know-how".

Q. Were there any other essential considerations of the contractual partners in connection with the conclusion of the contract?

A. Yes. Here I want to leave all the uninteresting ones out. For instance, it was provided that before any patent rights were transferred, a number of things would have to be settled, for instance, a premium royalty for the partner who brought the process, and then before this process was brought in and before the patent royalties were transferred, the cost would have to be discussed. This was to be done if one of the partners agreed to undertake the development work at the expense of Jasco.

The parties recognized at the time that it was very difficult to settle all future cases then, and so they made this clause in the contract that they found it impossible to foresee all possible cases for the future and that these things would have to be agreed upon when the case arose.

Q. Was that the idea of the Standard Oil people as well?

A. Yes, certainly. They also recognized how difficult this was, to make these arrangements in the case of Jasco. Therefore, at one time the people of Standard Oil said jokingly that this was not really a proper

agreement but it was merely an agreement to agree.

Q. Did they mean by that that the Jasco agreement was not binding because it had not settled matters definitely enough?

A. No, I don't want to say that. I believe that the Prosecution is correct when they said in their opening statement that despite those many uncertainties a proper binding contract had been concluded.

Q. If I understood you correctly, the Burn process on the basis of crude oil belonged to those processes for which the Jasco agreement provided that after certain preliminary considerations had been reached they should be turned over to Jasco?

A. Yes.

Q. In the case of Suna, was everything treated in the customary way as far as the contract provided?

A. No, in two ways the rule was not observed. The first deviation was not so important, merely the formalities of offering the option were not observed because it was a matter of course that the Standard Oil was interested in the Suna process. Since we were sure of that, we did not have to ask that first. The transactions between our enterprises were not so formal. Therefore, the taking up of an option never formally arose. But I emphasize specifically that we did not construe any privileges arising for us from this contract. We did accept the state of affairs as though the option had been taken up by Standard Oil.

The second deviation from the normal rule was a little more important. All of the development work in the Suna field, or at least the main development work, was not done at Jasco but in agreement with Jasco, and at their cost. This development work was done in Germany because in this particular case it was more economical and more reasonable.

As I remarked a short while ago, the contract provided from the very beginning that this could be so arranged.

Q. I should now like to deal with the exact date a little more when the entire Suna process based on crude oil with their patent rights and know-how would have to have been introduced. Tell us once more briefly how this time was laid down in the contract.

A. If, as in this case, the patent was chosen according to which the development of the process was not done in Jasco itself but in Germany, at one of the partner plants, then — as in this case the commercial exploitation is in order, which means that a completely finished process which can be turned out to third parties in the form of licenses — the patent rights be transferred to Jasco, including the know-how. Of course, then compensation had to be settled.

Q. When describing the Standard Oil question in general you already mentioned that the execution of an agreed-upon exchange of experience, that

is to say, know-how, was the affair of the technical men--not of lawyers.
Does this in particular apply in the case of Buna?

A. Yes, of course.

Q. Could you then determine the time yourself when the process had been finished and ready to be granted licenses on?

A. No, of course not.

Q. You said further that Howard never complained to you about a lack of observation of contract terms by Farben, and that from that one could conclude safely that he just did not have any such complaints. Does this also apply to the case of Buna?

A. Yes, certainly. I did not forget Tor Hoer's statement one time that he would consider it the crowning glory of his life's work if the Farben Buna process was applied on a large scale in the United States.

Q. The time when the process was to be turned over to Jasco was when the process was ready for licensing to third parties. According to your best knowledge, when was this time for Buna? When had this time arrived?

A. I know that in the autumn of 1938 Tor Hoer went to the United States to Standard Oil, probably because he considered the time had come -- but one should have to ask him about this. But I know that at that time the idea was mentioned that first of all during the summer of 1939 experiments on tires had been favorably concluded, the date was postponed to the summer or autumn of 1939. It was definitely intended that Tor Hoer and I should go to New York in the autumn of 1939 in order to conclude these negotiations. This we did not merely want, to exchange know-how and technical questions, but a number of other things arising from the contract had to be settled which required my presence there. For instance, the question of making proper monetary compensation.

I believe we had already reserved our passage for this trip that we had firmly prepared for. This trip could not be undertaken because of the outbreak of the war.

Q. I now turn to the so-called Hague Agreement which the Prosecution

offered as Exhibit 993, Book 43, page 77 of the English, page 75 of the German. Please explain as briefly as possible what circumstances and considerations led to this agreement and what measures were taken in connection therewith.

A. After the war broke out on the continent —

DR. SILCHER: Mr. President, a small mistake in interpretation has been pointed out to me: "Refund of expenses" was translated as "monetary compensation". That, I believe, is something different. I believe that the correct translation should be "Reimbursement of costs."

THE PRESIDENT: Very well.

BY DR. SILCHER:

Q. "Would you please continue.

A. After the war broke out on the continent, which was at the end of September 1939, negotiations took place between Standard Oil and Farbon in the Hague. Standard Oil had requested that these negotiations should be carried on by cable. There were to deal with two things. First of all, a basic change in the construction of the Jasco agreement and then the transfer of a whole number of patents from Farbon to Standard Oil from the old contract of 1929, and also from the Jasco contract. In the telegram in which Standard Oil requested this conference, they had already limited that these patents be transferred. When they spoke about changes in the Jasco Agreement, they meant this:

Up to that time Jasco treated all of the countries except Germany, and both partners participated on a fifty-fifty basis. Now the war on the continent had broken out, Germany was blocked off.

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Up to that time Jasco treated all of the countries except Germany, and both partners participated on a fifty-fifty basis. Now the war on the continent had broken out, Germany was blocked off.

In any license negotiations Farben could no longer have participated. Farben could not have done any war work on their patent, that is, they could not have defended them if they had been attacked. They could not have paid taxes, and such things. As a result it was intended to divide these countries interests. The rights of USA, England and France were to be transferred to Standard. All rights of the other countries were to be transferred to Farben. This arrangement seemed reasonable. Of course, we realized that that half of the world which the United, France and England would receive, together with the British Empire, would be the more valuable one in regard to this process, and, therefore, it was agreed that if this were found to be true later a corresponding equalization should take place. In regard to the transfer of patents, which is an extremely complicated affair, Standard had asked -- it was in their interest that it be done, and they even had a claim established, with a result it was agreed upon by Farben and it was actually undertaken to transfer these patents in regard to Buna-patent only in the Spring of 1940, because of technical difficulties.

Q. The Prosecution sees as a sole purpose in these changes, and these measures, to be the protection of Farben property in case of war and against confiscation, is that correct? What was the attitude and background reasons for this action on the part of Farben?

A. The arrangement seemed reasonable to us. Since war had broken out on the Continent, a contact of Farben with England, and France was not at all possible. At that time we didn't expect war with the United States, but at any rate every reasonable human being had to take the possibility into account, and, even if war didn't break out, we were very widely separated on the traffic side of the United States. It was true that Buna-process had not yet been brought into Jasco, and the fact that war on the Continent had broken out, no products anyhow could be exchanged, that was a matter of course, but a transfer of patents to the Standard Oil for which they had a claim, we believed that we could promise

that, and with that the transfer of patents. I should like to state explicitly, however, that both partners had the idea in this entire affair of improving their position in the case of a possible war with the United States, which was not quite inconceivable after all. It seemed correct and more cautious to transfer the title to Standard Oil, and we had no misgivings to do this, for they had claimed to have it done.

When asking for permission from the German authorities, we, of course, emphasized especially something that was not incorrect, the fact that this would be favorable for the German interests to have these patents transferred. These are apparently these letters and file notes that the Prosecution means. It was quite acceptable that if all these things had to be discussed with the German Wehrmacht, it was quite evident that these things should be emphasized, namely, that the transfer was an advantage to the German interests.

Q. The development of the Buna-process under the aspect of Jasco-contract is going to be dealt with by the competent technical colleague of yours, but can you give us a short outline of this development yourself, if these involve matters which is extremely difficult, it is important not to lose the thread?

A. With a few sentences I can give you a rough outline. The Buna on the coal basis was not included in the Jasco-contract. However, Buna based on petroleum was included, and with mutual agreement the development of Buna-process was not essentially to be worked in at the Jasco plant but at the Farben plants, because according to the economical circumstances that was the only reasonable procedure. The Buna-process based on petroleum was already being licensed, only in the Autumn of 1939. That is to say, it had been completely developed so that it could be turned over to the third parties. In the Autumn of 1939, or in the Spring of 1940 Farben, according to contract, transferred the particular contracts with the changes that had been made in De Hague to the Standard Oil, and to do this we were able to get the permission of the German authorities.

The exchange no how could no longer take place after all, after the war on the Continent had broken out, especially, not since the French and the British former Warbon patents had been transferred to Standard Oil.

Q. If you look at the overall pictures, according to your best knowledge and conviction, did Warbon in the case of Buna conduct itself completely in agreement with the contract, and fairly towards Standard Oil.

A. It is my confirmed conviction that this was the case.

DR. SILCHER: Mr. President, I now offer several documents. In Book III, the next document No. 18, on page 153 will be skipped by me. We succeeded in the mean time in procuring the records to this interrogation by Mr. Farish, and we shall present excerpts from the record in that appendix, and we do not have to rely on this excerpt from the newspaper any longer. I now offer Exhibit No. 17, Document No. 19, on pages 154 and the following, and belonging to this is the Exhibit No. 18, which is document No. 29, which is contained in Supplement to Book III. Document as Exhibit No. 17 has excerpts from the book.

THE PRESIDENT: Are you objecting to that?

MR. SPRAGUE: Mr. President, as I understand now, having seen the supplement that is being added to it, then the matter has been covered by an affidavit, so I withdraw my objection.

THE PRESIDENT: Very well.

DR. SILCHER: Exhibit No. 17 is an excerpt from the book, "Buna Rubber -- The Birth of an Industry." The author is Mr. Howard, whose name has been mentioned repeatedly during this examination. I should like to point to the content of this document quite briefly. It is on pages 154 and 155, where according to the jacket of this book, -- Mr. Millikan, an American Nobel Prize winner says: "I saw much of Mr. Howard's own activities and found in him a man of high character, fertile scientific imagination, and of penetrating intelligence, both in petroleum science and in law." On page 155: "I have had the opportunity to look over the proof sheets of this book, and am sure that the history which

it narrates comes from the pen of one who knows more about that history than any living person." This book contains, particularly as seen from the partner, Standard Oil, a decisive personage, for that part contains the complete and true history of the Bush case. This presentation of facts shows the purely, absolutely private character of this affair, which shows the definite struggle of Farben for the birth of this new industry in the United States. Mr. Howard's affidavit, who is the author of this book, confirms under oath that fact, on pages 1 through 9 of this book. These are the only ones which deal with the affair under discussion here. "...are all true to the best of my memory, knowledge and belief." Mr. Howard then states further in this affidavit how he checked all available documents, and how he used them for his book, and for his presentation of facts in order to present the true state of affairs objectively.

I now turn to the point "Camouflage and Obscurement," paragraphs 69 to 73, of the Indictment, Exhibit No. 18. The Prosecution presented Exhibit 1020, and the following in this connection. "Mr. President, this is in Book 50, on pages 1 and following. Farben is here charged that they have protected their property abroad since 1937 in expectation of possible war. In the trial brief it is stated, since 1938. In the trial brief it is stated specifically that in July or August 1938, the legal department of Farben had allegedly undertaken steps for protecting the foreign assets against the possible influence of war. What do you have to say about that?

"I first of all must say that a legal department of IG does not exist, as I already had stated when I explained the legal system. The Exhibit 1020 ---

DR. SILCHER: Page 17, Mr. President.

THE WITNESS: Exhibit 1022 is the internal file under the legal department Dyestuffs in Frankfurt. The camouflage and Obscurement was an affair of sale combine, and there a particular legal department for the dyestuffs. The legal department Dyestuffs was responsible for dyestuffs, they were responsible for Dyestuffs-pharmaceuticals, and so on.

BY DR. SILCHER:

Q A further document in this connection is Exhibit No. 1020. The Prosecution on page 1, Mr. President, has presented excerpts of the Legal Committee Meeting on 17 March 1939. The Legal Committee had convened, it was stated, two days after the occupation of Bohemia and Moravia, 15th of March, and on the basis of a lecture by Dr. Kersten, they had agreed upon suggestions about camouflaging their foreign assets to prevent confiscation in the event of possible war. Mr. von Krierem, did you really convene this conference in which fourteen different lawyers participated living in five different places in Germany after the occupation of which Bohemia and Moravia within a few hours?

A No, you have to think about this thing. I already stated that this meeting of the legal department took place once a year. The term was fixed many weeks before. My office telephoned to all the gentlemen in question, in order to fix the date, it might be suitable to all concerned. That was not so easy. Besides that, the voluminous lectures showed that in the delivery of this meeting, that no preparation was necessary. It is quite impossible that this one particular day the Legal Committee was convened. There were ten different points with which they concerned themselves with particular questions. It was not the task of the Legal Committee to deal with current questions of the day, and to correct resolutions and measures that had to be determined immediately.

Q Since the Prosecution does insist in their charges in the trial brief, would you please express your opinion quite briefly about the camouflage measures of Farben?

A I believe I can be brief because these things have all been discussed at length during the examination of the witness, Dr. Knepper. The state of affairs is the following: All these things originated in consideration of taxation. If the German enterprise, I. G. Farben, wants to become active in their country for manufacturing, or other reasons, then they can do so under its own German firm, but this has very unpleasant effects in taxation that I do not want to describe in detail, and as a result, this has always been customary, that a corporation under a particular country abroad should be founded in a country whose shares were first held with the mother company. When the general regulations for taxation became intensified in the various countries, this was not adequate, and shares were generally handed to foreign confidential agents, for instance, the director of this foreign plant. Apart from these considerations due to taxation, beginning with 1933 there was very increasingly other considerations. The increasing unpopularity of everything German abroad was considered. That was a further reason why very frequently that already had what the Prosecution has described as "camouflage". That, of course, for a long time, already, consideration was of importance, that an eventual war might bring some danger. An enterprise on a world basis has to think of this at all times, and such safeguards for the case of war has always been customary in the world market. Every bill-of-lading contains this. Every transport, insurance contract contains these clauses.

I believe that I remember that the Prosecution pointed out at one time that this camouflage was undertaken in agreement with the Nazi Government. The exact opposite is true. The Foreign Organisation, the AO, that has been mentioned several times here strongly opposed this camouflage as far as possible. They wanted to hoist the flag in every foreign business house. There were many conflicts between those business men in our enterprises who had to do with these things and with the Foreign Office, AO.

Q.- From what time on approximately did Farben camouflage? You speak about a certain intensification since 1933 but you didn't give the beginning, - the year when it began?

A.- I cannot give you the exact date. I believe that Mr. Kuepper, who was a specialist, testified as a witness here that it was done already before the first World War.

Q.- You spoke about the foreign organization. What do you mean? Which foreign organization do you mean?

A.- The AO, the Foreign Organization of the Party. It has been discussed repeatedly here.

Q.- Mr. President, Mr. von Knieriem, referring to Dr. Kuepper's lecture in the meeting of the Legal Committee of 2 October 1940 the Prosecution offered this as Exhibit 1038, Book 50 on page 87, 127 of the German. The testimony of the witness referred to by Mr. von Knieriem is of 28 October 1947. Herr von Knieriem, did the question of safe-guarding foreign Farben property in 1937 and 1938 appear again? Was it again dealt with with particular emphasis in regard to the possible danger of war? To prove that the Prosecution submitted the record of the Legal Committee meeting with Lawyer Kersten, Exhibit 1020.

A.- No, the Prosecution left out the first part of the record. From the first part it can be seen that all the question about safe-guarding of property apparently was done under the entirely different aspect, mainly the aspect of the so-called "gold clause process". What motivated us at

the time was not safe-guarding ourselves against a possible war but the great danger of the gold process. It is different but I can tell you in a few minutes what motivated us at the time. I want to describe this with the aid of the particular case that concerns us at the time. There was in America an enterprise called the General Aniline and Film Corporation. This corporation was in touch with Farben. What nature these connections were is not important here. This corporation, General Aniline and Film Corporation has issued a loan of \$ 30,000,000. This loan contained the gold clause. Farben had guaranteed the payment and promised to answer for the payment in the United States. The dollar had been devalued and the gold clauses were revoked. That was the so-called "joint resolution". The General Aniline and Film Corporation only needed paper dollars in the United States and a creditor in the United States could only ask for paper dollars. A few European countries had instituted the practice of not recognizing the revocation of the gold clause. If the General Aniline and Film Corporation had been sued in such a country it would have had to pay gold dollars but this danger did not exist in the case of the General Aniline and Film because they could not be sued in such countries because they had no property there. There was no competent court in those countries. Farben, however, the agency that guaranteed this loan had property all over the world because they had patents all over the world. That sufficed to create a possibility of suing Farben and the absurd result might have occurred that the debtor, namely, the American enterprise in the United States would have to pay only paper dollars and that the German citizen, however, would have to pay gold dollars. That is, of course, an affair which everybody must consider possible. We dealt with these questions at the time. I should like to say now specifically that Farben did not try to safe-guard their property against any confiscation by the Sheriff. I must point out this abnormal case once more. It's an impossible situation to have the debtor pay in paper dollars and in another case the guarantor might have to pay gold dollars. I should like to remark that this question worried me much more

then safe-guarding against any possible danger of war but since the safe guarding against war always was of importance it was also discussed as can be seen from the record.

Q.- Were there any people who exploited the situation described by your just now and, for instance, people who bought parts of this loan at the devaluated price in the United States?

A.- Yes.

Q.- In order by way of trial to force payment of gold dollars in those countries where the revocation of the gold clause were not recognized?

A.- Yes, there were such people. In countries where one could get only paper dollars the traffic in these shares there was a big mix-up in the Legislature.

Q.- Mr. von Knieriem, you spoke about the General Aniline and Film Corporation. What name did this enterprise have when Farbent took over the guarantee and when this loan was issued?

A.- American I.G.

DR. SIICHTER: Mr. President, I am now offering a few documents from Document Book 4, Exhibit 19, Document 20, page 219 and following. The first page of this book is 219. This document is an excerpt from the record of the session of the Legal Committee of 17 March 1939; the beginning of the lecture by Kersten discussed by Mr. von Knieriem where he states "that the gold clause trials caused the entire problem of Farben's assets to be examined." I quote on page 220. "Thus the lawsuits concerning the gold clauses in which Farben is interested owing to the guarantee given to the American IG for the \$ 30,000,000 loan were the cause of the problem of the protection of IG's foreign assets to be examined in its entirety." The excerpt, except to that spot where the Prosecution Exhibit is mentioned is introduced. Exhibit No. 20 is Document No. 23 on page 237. The index erroneously states it is 238. It should be 237, 237 and 238, not 238 and 239.

MR. SPRECHER: To Knieriem's Exhibit 20, Document 23, the Prosecution has two separate points; firstly, we think the index is misleading without explanation and, secondly, we think the document is utterly immaterial. Now, as Dr. von Knieriem just said, every transport contract, every insurance contract for decades — contracts which are open and free and which involve the nationals of the same country and which involve the nationals of other countries are not secret whatsoever and also contain a war clause. Now, this contract of 1935 is nothing unusual in that connection and if all the Prosecution has proved in this case is that contracts between nationals which involved I.G. Farben have war clauses in it then we would indeed make a motion to strike our entire count in this connection. We will stipulate that contracts similar to this between all commercial parties that involved either insurance or transport contain war clauses but we will stipulate that this is true, not since 1935 but for — we won't say time immemorial, — but for an awfully long, long time.

THE PRESIDENT: Counsel for the defendant may consider whether or not he is satisfied with the stipulation. Perhaps you are not but by negotiation with the Prosecution you may be able to arrange a stipulation over the week-end that will serve your purpose. If not we will take it up on Monday morning, the administration of the question of the admissibility of the document. The Tribunal is now in recess until next Monday morning at 9:30.

(A recess was taken until 9:30, February 9).

QUEST VI CASE VI
9 Feb 48-1-1-M-AZH-Schwab (Katz)

Official Transcript of Military Tribunal VI, in the matter of the United States of America against Carl Krauch, et al, defendants, sitting at Nurnberg, Germany, on 9 February 1948, 0930, Justice Curtis G. Shake presiding.

THE MARSHAL: Persons in the courtroom will please find their seats.

The Honorable, the Judges of Military Tribunal VI. Military Tribunal VI is now in session. God save the United States of America and this Honorable Tribunal.

There will be order in the court.

THE PRESIDENT: Make your report, Mr. Marshal.

THE MARSHAL: May it please your Honors, defendants Krauch, Schmitz, Haefliger, Lautenschlaeger, Schneider, Gajowski, and Ter Meer are absent from the courtroom.

THE PRESIDENT: The defendants named are excused from attendance today on their respective applications.

Are there any general announcements before we resume the trial proper? Anything, Dr. Boettcher?

DR. BOETTCHER: No, Mr. President.

THE PRESIDENT: Have you, Mr. Prosecutor?

MR. SPRECHER: No, Mr. President.

THE PRESIDENT: Then, Dr. Silcher, you may proceed with the interrogation of the defendant von Knieriem.

DR. SILCHER (Counsel for defendant von Knieriem): Mr. President, at the end of Friday's session we were discussing Knieriem Document No. 23, which I wanted to offer as Exhibit No. 20. Just now I received a formulated suggestion of the Prosecutor's about a stipulation on this point. We had discussed this matter a little more on Friday. I should like to discuss this stipulation still further with Mr. von Knieriem and colleagues. I therefore suggest that at the moment I offer Document No. 23 only for identification as Exhibit 20, and that its introduction be postponed until after the morning recess.

THE PRESIDENT: Very well, that will be satisfactory.

DIRECT EXAMINATION (Cont'd)
AUGUST VON KNIERIEM, Resumed

Official Transcript of Military Tribunal VI, in the matter of the United States of America against Carl Krauch, et al, defendants, sitting at Nurnberg, Germany, on 9 February 1948, 0930, Justice Curtis G. Shake presiding.

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THE PRESIDENT: Very well, that will be satisfactory.

DIRECT EXAMINATION (Cont'd)
AUGUST VON KNIERIEM, Resumed

BY DR. SILCHER:

Q. Mr. von Knieriem, under paragraph 73, the Prosecution cites one case of camouflage and cloaking as preparation for war: the revocation of the contract guaranteeing dividends between Farben and I.G. Chemie Basol and also the further measures connected therewith of the year 1940. In this connection, Exhibits 1030 to 1034 were offered.

Mr. President, that is in Book 50, on pages 54 to 66 of the English.

Would you please explain what this affair has to do with camouflage and cloaking?

A. In my opinion, nothing. He revoked a contract which was publicized and well known all over the world, and this revocation was publicly announced.

Q. In view of this divergent point of view about this transaction, would you describe this transaction briefly, as the parties considered the matter and as they desired it at the time?

A. I can do this fairly briefly. I remember that in its opening statement the Prosecution pointed out that the dispute as to whether the American Alien Property Custodian had confiscated the General Aniline, rightly or wrongly was entirely uninteresting for this case. That is correct, and therefore I shall not speak about it. Of course, in 1940 every reasonable human being had to consider the possibility, which after all existed, that war might break out with the United States; in particular when he thought of the course of events of the First World War and the unfriendly sentiment prevalent in the United States against Germany. The transaction might be described in summary about as follows:

From 1930 on I.G. Chemie Basol owned more than ninety per cent of the shares of the American I.G., which was later called General Aniline & Film Corporation. This General Aniline & Film Corporation in turn had production plants in the United States in the pharmaceutical, dyestuffs, and photographic fields, or at least participated in such. These shares were the main holdings of I.G. Chemie and its most important source of income. I.G. Farben did not possess any shares of I.G. Chemie. However, they were closely connected by a contract whose main contents consisted

of the following two points:

I.G. Farben had the right at any time to take out assets of I.G. Chemie at par value. That included the ninety per cent participation in the General Aniline & Film Corporation.

As a compensation, I.G. Farben had given the I.G. Chemie the following guarantee. If I.G. Chemie at any time should not be in a position to pay the same dividends to its shareholders from its own profits as I.G. Farben was able to pay, then I.G. Farben was obligated to pay enough money to I.G. Chemie so that the latter would be able to pay these dividends to its shareholders.

If this contract had been permitted to remain in force in case of war between the United States and Germany, then the Alien Property Custodian would have confiscated the shares of the G.A.F. as being German-owned or German-controlled. It is true that I.G. Farben had no property rights, no title to this General Aniline stock, but the right of taking them out and the option created a condition which, as far as I know, is called "beneficially owned" in the United States, and that would have sufficed.

The Alien Property Custodian would also have been able to further his own case that a considerable part of the shares of I.G. Chemie were owned by private German citizens, and finally he would have been able to assert that the president of I.G. Farben, Schmidt, was at the same time president of I.G. Chemie.

The gentlemen of I.G. Chemie Basel and also the gentlemen of General Aniline now approached us and requested us to consider dissolving the connections between I.G. Chemie Basel and I.G. Farben, and therewith the relations between General Aniline & Film Corp. and I.G. Farben.

I.G. Farben agreed, and the following was done.

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The Alien Property Custodian would also have been able to further his own case that a considerable part of the shares of I.G. Chemie were owned by private German citizens, and finally he would have been able to assert that the president of I.G. Farben, Schuch, was at the same time president of I.G. Chemie.

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I.G. Farben agreed, and the following was done.

This contract guaranteeing dividends between I.G. Chemie Basel and I. G. Farben, was first of all revoked without any reservation. Second, Schmitz resigned from the Verwaltungsrat of I.G. Chemie Basel. Third, a campaign was started to reduce the shares of I. G. Chemie in private German hands to such an extent that nobody could speak of any indirect German influence on that company. American lawyers were of the opinion that these shares would have to be reduced to at least fifteen percent. This was done in the following manner.

I. G. Farben increased its stock capital. The newly issued I.G. Farben shares were offered to the German shareholders of I.G. Chemie shares in exchange. The I.G. Chemie shares which were thus taken in by Farben were sold to I.G. Chemie Basel for cash, and I.G. Chemie Basel then called in its own stock. The cash paid by I.G. Chemie Basel was used to cover the capital increase.

Through this transaction, to which the German shareholders of I.G. Chemie agreed voluntarily because the conditions of the exchange were favorable, the German ownership of I.G. Chemie stock was reduced to about fifteen percent.

Q Was this dissolution of the contract guaranteeing dividends and the other measures the sole change in the relationship, or were there any preparatory steps?

A There was one preparatory step which I left out deliberately because I did not want to overburden my description too much. A few months earlier, in May 1940, before the final dissolution of the contract, the option in favor of I.G. Farben was changed into a "first refusal."

Q The Prosecution has stressed that the transactions had been discussed with the OKW and that they were carried out in agreement with the OKW, as proof of the military and warlike nature of this particular transaction. What is the story on that?

A It is correct that a very small part of the transaction, which was rather insignificant, was discussed with the Army authorities. I stated previously that I.G. Chemie Basel paid cash to I.G. Farben. That is correct. But they did not pay everything in cash; as a small part of the purchase price they turned over shares in a German armaments plant. These shares were in the hands of the I.G. Chemie Basel, and, as far as I know, the Army authorities preferred to have those shares get back into Germany. It is true that the Army authorities were consulted about this small part of the transaction. All other questions of this extremely complicated affair, which was much more involved in all its details than I described it just now, were discussed with the Ministry of Economics and the Reich Ministry of Finance.

Furthermore, everything that I have just said about the dissolution can be seen from the Vorstand resolutions, which I have in the meantime as documents, or which I shall offer; so I don't have to give you any details about that.

Q What dangers were feared, and what developments were expected if this entire removal of German influence upon I.G. Chemie had not been undertaken, if a certain indirect German influence upon the G.A.F. had not thus been removed, and if the connections between Farben and I.G. Chemie had not been dissolved completely?

A I can answer this in a few brief sentences. If the contract between I.G. Farben and I.G. Chemie had been permitted to remain in force in case of war between the United States and Germany, then, of necessity, the following would have occurred. The American Alien Property Custodian would have confiscated the G.A.F. By this measure I.G. Chemie would have lost its main source of income and its main property. It would not have been able to pay its shareholders the same dividends which I.G. Farben paid its shareholders. The dividend guarantee would have come into effect. By reason of the legislation

about foreign exchange, I.G. Farben would not have been able to transfer money into Switzerland, or would never have received permission to do so. Then I.G. Chemie Basel would have had to sue I.G. Farben, in the interest of its own shareholders. I.G. Chemie Basel could have sued I.G. Farben in Switzerland, because I.G. Farben had property in Switzerland. For instance, patents. I.G. Chemie Basel would have won this suit without a doubt. In international jurisprudence prevention by reason of German foreign exchange laws has never been recognized as a force majeure for a German debtor.

After I.G. Chemie Basel had won this case, it would have confiscated the patents of I.G. Farben as far as they were in Switzerland. This is not a conclusion deviously arrived at, but this was the case a short time before 1940 in a case affecting the A.E.G. (the Allgemeine Elektrizitätsgesellschaft) and Siemens.

Q I should like to say this in regard to the translation. Mr. Sprecher has been kind enough to point out to me that the expression G.A.F. was once translated as D.A.F. It was always G.A.F., the General Aniline and Film Corporation. D.A.F. would be the German Labor Front, which does not have anything to do with this matter.

Now, Mr. von Kries, the Prosecution also stressed the intervention of the Laenderbank in this transaction to prove that the entire transaction had to be kept under cover. What do you have to say about that?

A Quite frankly, I didn't quite understand what the Prosecution meant here. Such transactions which have to do with capital increase and exchange of shares are undertaken by banks all over the world; I believe that it is one of the reasons for the existence of banks. All the many increases in capital of Farben during the last twenty-five years were effected in the same way as the one that I spoke about; and an exchange of shares among the public can be effected only by a bank, because it has the organization to do this.

It may be - I do not know it from memory - that a few of these letters bore the stamp "secret". I do not know whether that is true, it may be; but that means nothing. Correspondence in Germany during the Third Reich was classified "secret" to a large extent, often without any sensible reason.

Q Did the Laenderbank carry out this transaction, and especially this exchange, for the account of Farben?

A Yes, of course, as was true of any increase in capital.

Q The Prosecution in this connection called the Laenderbank a dummy. Is that characterization correct?

A It was just as little a dummy as any other Bank which undertakes to effect such a capital increase, and who then circulates the shares among the public. The only difference here was the fact that the new shares taken over by the Laenderbank were not circulated or brought into the public, but were used for the purposes of exchange that I have described.

DR. SILCHER: Mr. President, I now offer a few more documents from Document Book No. 4. First of all, Document No. 21, on pages 224 ff, I offer as Exhibit No. 21. This is the contract mentioned by Mr. von Knierim, guaranteeing dividends between I.G. Farben and I.G. Chemie Basel of 1928. I have nothing further to add in this connection.

Exhibit No. 22 will be Document No. 22 on Pages 232 to 236, not 237, as is indicated erroneously in the index. These are excerpts from the minutes of the I.G. Farben Vorstand meetings - all of these excerpts, all of those passages from the minutes where this transaction was discussed by the Vorstand.

These excerpts are partly not wholly, identical with parts of the excerpts in Exhibit No. 5, which also contains excerpts from Vorstand minutes under the aspect of throwing light upon Mr. von Knierim's field of work.

I offer Exhibit No. 22 to show how the transaction was with all of its details.

Q Mr. von Knieriem, as Exhibit 1267, Book 59, page 31 of the English, the Prosecution submitted a long draft containing suggestions for changes in the French Patent legislation. This is a letter of I.G. Farben, Leverkusen, signed by Bruggemann and Reddies, to the German Reich Ministry of Justice of November, 1940, about French patent conditions in the pharmaceutical field. Professor Hoerlein has already dealt with this letter briefly.

I should like to ask you now what you know about this letter, whether you knew it, or whether you had anything to do with its origin.

A The letter was drafted by Dr. Reddies, the Chief of the Patent Department, Leverkusen. I can no longer remember whether I read this letter before it was sent out or not, but I was certainly informed about its contents beforehand.

In regard to the unusual patent conditions in the field of pharmaceuticals in France, where practically all patent protection was lacking, I should not like to speak in detail. Professor Hoerlein has already given some indications of this. Besides, this affair will be further dealt with during the trial at another point.

About the patent conditions in the pharmaceutical field in France, discussions took place between I.G. Farben and Rhone Poulenc. The French Pharmaceuticals Industry and the pharmaceuticals industries of other countries, except Germany, were also very dissatisfied with conditions in France in this field. I knew also that a commission in France to which Rhone Poulenc belonged discussed this matter with the French Government. The law was then changed. Normal conditions were created. After 1945 this law was kept in force; this I want to point out expressly here. It is true that this point has already been mentioned by Professor Hoerlein, as well.

At the time I never had anything else in mind than that a change in French legislation should be effected voluntarily and without compulsion by the French Government itself. My entire attitude on this question can be seen from the published essays which I wrote in 1941 and '42 and which

I shall deal with again in another connection at a later time, very briefly.

Q During their presentation of evidence, the Prosecution offered, under the heading "New Order", Exhibit No. 1050. This is in Book 51, page 140 of the English. It is entitled, "Suggestions for a Peace Treaty with France," dated 20 July, 1940, and bears the note, "Sent on behalf of Dr. von Krieger". What do you know about that?

A I do not recall with certainty to whom this document was sent, but I do remember that it was drawn up in the patent department, Ludwigshafen, and it was, at least generally, discussed with me. It is most probably one of the special drafts which were drawn up as part of the work which we called the "New Order". We had been requested by the Government to do the necessary work for all fields in question. Besides that, it had been desired that war damage should be included and, if appropriate, also damage arising from the Versailles Treaty. The witness Schlatterer explained that in detail here a few weeks ago.

In the introduction to this document of which you are speaking now, it is stated that victorious nations and defeated nations are to be treated alike as a matter of principle, but that in some fields a preferment of the victorious nation could be taken into consideration, which had also been done, it was stated, in the Versailles Treaty.

Q Can you give me an example for such a preferment of the victorious nation in the Versailles Treaty?

A I want to take an example from the field with which we are dealing now, namely the patent field. In Article 310 of the Versailles Treaty the following is provided for: License contracts between members of an Allied power and German nationals are to be revoked as a matter of principle. The licensee, however, can ask that he be granted a license again at conditions which have to be newly stipulated. If a German national demanded something like that, an Allied Arbitration Court would rule. If an Allied national demanded that, the laws and courts of his own country would rule.

Q This is enough for the first part of this document. Now we can

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turn our attention to the second part. The document consists of two parts.
What do you have to say in regard to the second part?

A The second part is a consideration of patent conditions in a German Grosswirtschaftsraum, (greater economic area).

Q May I give some suggestions for the translation? "German" should be "European" Grosswirtschaftsraum. The witness said "Europorn".

A It contains certain ideas that I began to concern myself with at the time. This part was prepared rather hastily. It seemed not very dangerous to me at the time to make such an abbreviated draft. I knew that the Reich Ministry of Economics could not decide about this, and that there would be a lot of time yet for detailed treatment of these things, and that I myself would have an opportunity to do more detailed work on the matter.

Q Was this assumption of yours confirmed, and how was this affair pursued in the future?

A In May 1941, in preparation of this work, I published an essay; a second essay was published in November, 1942, to which a few special reports were added. The affair was discussed with great thoroughness in a committee which I have already mentioned at the beginning of my direct examination. This was the committee belonging to the Conference for Industrial Legal Protection (Arbeitsgemeinschaft fuer Gewerblichen Rechtsschutz). There were a number of able experts represented on this committee, industrialists, lawyers, judges, and so on. I was presiding. The essays mentioned by me show the general conceptions that I had in mind.

Q Would you please explain these ideas briefly?

A I can only touch upon this entire field very briefly here. In these essays it was stated that the peoples of Europe would approach each other more closely economically after the war; that a number of things would certainly have to be settled which had to do with transportation, questions of double taxation, tariffs currency, and such like.

I pointed out that on that occasion the patent field should not be forgotten. International conditions in Europe in the patent

field, I said, were obsolete, sometimes bordering on the ridiculous. There were no fewer than approximately 30 different patent systems in Europe, I said. The smallest units had their own patent law. The Vatican had its own patent law. The city of Gibraltar, the Island of Malta, and even the tiny Channel Islands between England and France had their own patent law.

If anybody wanted to have patent protection without gaps in Europe, he would have to register about 30 times; 15 of those 30 states, approximately, had preliminary investigation. In 15 different places the same work would have to be done. The entire literature would have to be read through in 15 different places; and nobody benefited from the work of his neighbor.

What I suggested or rather what I threw open to discussion was: After the war the European states should get together and equalize their patent laws. It is true that I suggested that the German patent legislation should be taken as the model. In my essay at the time I stressed emphatically that I did not do so because I believed that Germany would have an accretion in power after the war, but that I did so because the German Patent Legislation was one of the most modern and was recognized internationally.

In my essay I pointed out, however, that my suggestion was not aimed at accepting this legislation without change, but that every state should express what it wanted to have changed, and I myself suggested a few changes. In other words, it was to be a voluntary collaboration which was to terminate with an adaptation of the various patent legislations.

I further opened for discussion the idea of creating a uniform European patent. I added that that was perhaps a little radical; one might perhaps be satisfied with undertaking the great task of preliminary checking only in one spot, so that one agency in Europe would have to read through this literature instead of 15 different places.

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The decision of this one agency should then be binding for all
as far as the novelty of the idea was concerned. I furthermore
suggested to take the following idea into consideration.

A. European Patent Office should be created, and the German Reich Patent Office should be re-converted to a European Patent Office. We already had the Berne Office, which was an international agency, paid by all the contracting nations. In one of these essays it was even said that this European Patent Office would have to be staffed with members of all nations and that German Civil Service Law would of course not apply.

Q. Herr Von Krieren, to give a short idea; what did this Berne Office (the Berner Buero) deal with?

A. The name shows: it is the Bureau International reunie pour la Propriete Industrielle, litteraire et artistique, (International Office for Industrial, Literary, and Artistic Property).

Q. I think that's enough. How did the world react to this idea of yours?

A. It was given much attention. Since my imprisonment I have been interrogated by American experts who informed me that my essays had become known in the United States also, had been translated and re-printed. They told me that they considered them very interesting and significant. I should like to say here that America, of course, was not involved at all, because this was merely a new arrangement for Europe.

Q. Did you think when you had your suggestions published that other European countries were to be or might be taken advantage of in the patent field?

A. No, certainly not. I acted with the endeavor of an expert to modernize certain antiquated regulations and to make them more reasonable. In one of these essays one can even find the remark that in this entire affair national sensitivity would have to be given consideration. I should like to state that I concerned myself with such questions at a much earlier time. In 1924 or 1935, for instance, I published an essay on the international unification of patent periods. This article was translated into English and French as well.

I should like to say one word in summary in regard all this work;

I believe that the work on this subject that I have just been discussing belongs to those few good writings done in Germany under the Nazis in the legal field. At some time something will be done in this field in the direction of my suggestions. Perhaps the matter will be handled differently; better and more intelligent solutions might be found; but in all this work, my articles and the work done by the commission will certainly be taken as a basis.

Q. One more question in this connection; were these ideas the first of this kind?

A. No. Similar ideas were held earlier, especially in France and Holland, soon after the first World War. I don't have to say more about it, because in the repeatedly mentioned articles I deal with that in the introduction.

DR. SILCHER: Mr. President, I now offer a few more documents from Document Book 4. First, Exhibit No. 23 will be Document No. 24 on pages 239 ff, not 240 ff as stated in the Index. These are extracts from the two articles just discussed by Mr. von Knieriem. I do not wish to say any more about the contents because I believe that Mr. von Knieriem has said quite enough on this subject, all the rest can be seen from the document itself; but I should like to call a few phrases to your attention to give you an idea of the spirit in which I believe these articles were written. Not the spirit of a victor who wants to subjugate the defeated, but the spirit of a citizen of the world to whom equality of human beings and nations is a matter of course. On page 239, the lower part (for the interpreter): "The reason which makes it seem advisable to start with an examination in this field even now is the fact that, especially with reference to this point, there was always a keen desire for international co-operation; this led to the fact that in this field, as probably in no other, the civilized nations, apart from the interruption through wars, co-operated smoothly for decades, and to a certain degree coordinated the legal criteria valid in their respective countries. In 1939 this co-operation was, of course, interrupted by the war."

Then, on page 240, it is stated expressly that at an earlier time ideas appeared, advocating change for the benefit of all concerned.

On page 245, the final paragraph: "In conclusion I wish to point out that the foregoing remarks are put forward as suggestions and not as definite propositions; they are meant to present the problem itself and not so much its solution. Doubtless there are many other ways of dealing with the problem, and upon closer examination this or that aspect will prove to be not good or at least capable of improvement. Yet I feel sure that something must be done in the direction indicated after the end of the war, if a unique opportunity is not to be missed. The suggestions made, particularly those dealing with patent matters, may appear somewhat radical to many people. But probably future generations in retrospect will be even less capable of imagining the present situation than we may at present of grasping the idea of co-ordination, as we look into the future. Therefore, all those concerned should begin now to think about these questions."

The next document is No. 25. I offer it as Exhibit No. 24, on page 252 ff. It is an affidavit of the Berlin lawyer Richard Moser von Filseck, who collaborated in this field with Herr von Knieriem. He makes statements more or less as an expert witness, first, generally, about Mr. von Knieriem's work as the Chairman of the Academy Committee, and then in particular about those publications of Mr. von Knieriem which have now become Exhibit 23. I should like to quote briefly on page 255 at the bottom. These are the articles Dr. von Knieriem had published.

"In this connection Dr. von Knieriem started with propositions already discussed by the allies and neutrals abroad during the first World War. The treatment of these questions was based on the clear recognition that the requisite economic co-operation in Europe could be established only after surmounting the obstacles resulting from divergent patent laws and otherwise the legal protection of industry. According to Dr. von Knieriem's observations, the work was inspired by the conviction

that effective unification could arise only from voluntary co-operation of all European states. Therefore, solutions would have to be found which made allowance not only for national feeling but also for national sensibilities. "

And then a few lines further down, on page 256, he speaks about the extent to which Mr. von Knieriem was pervaded by the necessity for equal rights for all concerned.

Mr. von Knieriem, I will now touch upon a further point. In connection with the New Order, the Prosecution in regard to the consideration made by Farben turned it the "long-range aim of Farben to dominate the chemical industry." In the trial brief the Prosecution spoke about the aggrandizement policy of Farben and about its desire for conquest and domination and the endeavor to enlarge its "empire" even further, and thus consider all the measures particularly charged under Count II Plunder and Spoliation.

I should like to ask you in this connection; was Farben always dominated by ideas of aggrandizement, of extending its empire?

A. No, on the contrary.

Q. Can you give a striking and significant example therefor?

A. In 1942 it looked as though we would probably in a very short time have need of a large amount of money, and we considered how we could get this money. We wanted to avoid an increase in capital. In our opinion Farben was already too large. We thought of convertible bonds. Such a convertible bond would mean that the share-holder, instead of getting his money back, could demand shares of the issuing company. In this form convertible bonds would have brought about an enlargement of Farben again. Therefore we thought of a new way. We looked for a form in which we would be able to give the loan creditors shares as we had in Farben. In other words, not shares of the mother company, Farben, but shares of subsidiary companies. By so doing we would have taken out subsidiary shares from the property of Farben and would have decreased the concern.

Q. Was that a familiar idea in Germany?

A. No, the idea was completely new. In all respects we met great surprise, even a lack of understanding. It was extremely difficult to reconcile this plan with the existing regulations in the field of taxation legislation and stock corporation law, but I don't want to deal with these matters in detail.

Q. Would such a change of the loan into subsidiary shares really have resulted in a decrease of Farben's holdings and the concern itself, and was that seriously intended?

A. Yes, absolutely. If shares are given away this means you are giving up some property, just as in the case of other pieces of property. Of course, such an exchange would have to be only a right of the loan creditors; if they preferred, they could demand their money back, but the exchange for subsidiary shares would have been very favorable to them. It is true that some shareholders might have said that they didn't know these subsidiary companies so well as they did Farben and that they weren't so well informed about them. For that reason, we considered safeguarding these subsidiary shares for a limited time by a sort of dividend guarantee or something similar. For a certain period of time, there would still have been a close connection with Farben. Later, however, that was to cease, so that they would have been separated from Farben.

Q. Were any steps actually taken to execute this transaction?

A. Yes. In the years 1942 to 1944 the affair was worked out down to the smallest detail. This was by far the largest single piece of work that I did during this time, and it sometimes took up the biggest part of my working time. The affair was discussed with the banks. Various official permits were applied for. Ten days on end there were discussions in the Reich Ministry of Finance about the taxation question. The necessary Vorstand resolutions were passed, and the permission of the Aufsichtsrat was obtained. Afterwards the loan was not floated, for a definite reason; air-raids were increasing more and more, and Farben received certain compensatory payments from the Reich; but at that time it was hardly possible to build any more, to invest the money. One could hardly buy any more machines, etc., because the machine factories had also been destroyed for the most part by air-raids. Therefore, Farben became more liquid in its assets, and an enterprise that already has liquid assets doesn't need a loan.

Q. Can one say that the transaction was completely ready to begin?

A. Yes, completely ready.

Q. Mr. President, I don't want to offer any documents in regard to this problem but only refer to the document offered as Exhibit No. 5, with the extracts from the Vorstand resolutions. There you will also find the Vorstand resolutions about this transaction. That's Book No. I, pages 27 ff. These are resolutions adopted at the 32nd meeting of 29 May 1942, to be found on page 47. Then, on page 56, the 43rd Vorstand meeting of 2 March 1944, and, on page 58, the 45th meeting of 30 June 1944.

Mr. von Kries, one more question about the beginning of your examination; you described your personal experiences between the two World Wars when the French entered Ludwigshafen. Your description seems to have been partly misunderstood. Would you please repeat what you said then?

A. Yes. To be quite honest about it, I believe that if it was misunderstood that was my own fault, because I was incorrect in one point, which, however, does not change the affair as a whole. It is true that in 1923 the French occupied German territory. It is true that that occupation of course made a deep impression on us. It is furthermore true that, as I described it, I had to leave Ludwigshafen at night. And now here is the point where I made a mistake. The occupation in 1923 of which I spoke, was a military occupation of the factory territory of the Badische Anilin und Sodafabrik. The city of Ludwigshafen had already been occupied. That's what I wanted to rectify.

Q. Is there anything to be changed in what you said about the occupation of the Ruhr by France?

A. No, nothing.

DR. SILCHER: Mr. President, Document 26 in Document Book IV is the next document. We shall not offer this at the moment because it would be of any significance only if Herr von Schnitzler should take the stand and his interrogations and affidavits were thus to assume significance for Mr. von Knieriem. I should like to mark it now for identification as Exhibit 25.

Mr. President, I assume that my colleague Dr. Pelekmann will continue the examination of Mr. von Knieriem after the recess.

THE PRESIDENT: The Tribunal will rise for its recess.

(A recess was taken)

THE PRESIDENT: The Tribunal is again in session.

MR. SECHER: Your Honors, in connection with Exhibit Document Number 25, I have arrived at a stipulation in agreement with the Prosecution, to the following effect. I hope my English will suffice to read it. "For the purposes of this case, the Prosecution stipulates that for many decades many industrial and commercial firms engaged in world trade have often had non-secret and open war clauses in their contracts with respect to the manufacture and/or transport of goods, insurance, and other matters."

THE PRESIDENT: Just a moment now. In order that the record may be complete, perhaps we had better have a comment from the Prosecution that it agrees to the stipulation.

MR. SPRECHER: Yes, Mr. President, my own insurance contract on my automobile contains such a clause.

THE PRESIDENT: Very well.

MR. SECHER: That means that Exhibit Document Number 25 will remain Exhibit Number 25 merely for purposes of identification. This document was to be submitted, but this is no longer necessary because of the stipulation. It was to prove that at all times international firms holding property in other countries thought of and prepared for the possibility of war. When preparing our defense in connection with that point, we had the choice of either submitting entire books relating to the subject, with hundreds of documents, which, of course, would have been entirely possible, but we thought that this point is sufficiently clear to the Tribunal because of its experience of life and the world, and we therefore considered it sufficient to submit only one single instance in order to indicate this problem with an illustration as it were. We are here concerned with open war clauses, whereas the Prosecution charges camouflage in order to safeguard property abroad. Camouflage, however, as such, constitutes no war crime, and we think

that both of these measures have in common the purpose of protection against the consequences of a potential war. A further instance of camouflage was mentioned by Dr. Kuepper when he gave his testimony on the witness stand, camouflage by the Lord Nickel Company of Canada.

BY DR. FELDMAN:

Q. Mr. President, gentlemen of the Tribunal, up to this point, we have been discussing questions in connection with Count I, Preparation for Aggressive War. I now turn to Count II of the indictment, so-called Plunder and Spoliation. Mr. von Knierim, did you, as a lawyer, have to deal with such matters as were designated by the Prosecution plunder and spoliation?

A. No, basically not, with the following exceptions: In the Franco-German contract, with which essentially I had nothing to do, I was once consulted, with reference to a special question which concerned exchange of experiences. Furthermore, I am acquainted with the charter of Chéné-Ost, G.m.b.H. Russia, because it was sent to me by the legal department of Berlin M 7. Finally, a trustees contract affecting the Synthese Deutschak G.m.b.H., was worked out in the legal department at Ludwigshafen, and I once signed a letter in connection with that matter.

Q. Would you please be a little more specific in describing how the situation was in regard to Chemie Ost, G.m.b.H.?

A. I actually had nothing to do with Chemie Ost. This was an instrument of the Economic Group Chemistry, with the aid of which the Economic Group Chemistry could take care of chemical plants in Russia. The participation in Chemie Ost G.m.b.H. was taken over by the Economic Group Chemistry at the rate of 30%. The smaller part was distributed among a number of smaller German chemical enterprises; I.G. Farben had only about 5%. When the charter of Chemie Ost G.m.b.H. was drawn up the head of the Legal Department of Berlin NW 7 assisted the Economic Group Chemistry. He was an expert in the field of charters and such. Furthermore, the head of the Legal Department of Berlin NW 7 sent a draft of such a charter to me. I recently explained that in the field of corporation law we two cooperated very closely. Beyond this specific question concerning the charter, I had nothing at all to do with Chemie Ost G.m.b.H., nor did the Legal Department of Berlin NW 7 have anything to do with it. Moreover, as far as I know, the Chemie Ost G.m.b.H. never actually started to operate.

Q. And would you give us some more specific information about Synthese Kautschuk G.m.b.H., as far as you know the matter from your activity at the time?

A. Insofar as questions of contract came up and played any part in this matter, they were dealt with by the Legal Department at Ludwigshafen. I personally did not take part in any of the conferences; I did not concern myself with the details, probably because they never went beyond the stage of conferences and discussions. I do recall, however, that I once signed a letter in connection with this matter. We are essentially concerned with the following: It was a trusteeship contract between the Reich, I.G. Farben, and the Synthese Kautschuk G.m.b.H.

Secondly, there was the draft of a letter which was to be written to us by the Reich Ministry of Economics, and thirdly, there was the draft of a charter for Synthese Kautschuk G.m.b.H. The trusteeship contract

was never concluded, the letter by the Reich Ministry of Economics was never written to us, and the Synthese Kautschuk G.m.b.H. never actually came into existence as a company. It wasn't even entered in the Trade Register.

Q. Where were the various local questions dealt with? I am referring to local questions with respect to I.G. Farben's measures in occupied territories; for instance, the acquisition of shares, etc.

A. That was done through the various local departments which, as I already explained when talking about the local structure of I.G. Farben, worked quite independently.

Q. And how was it decided which of the local departments had to deal with a specific matter?

A. That depended upon which branch of production or which sales company of Farben was concerned.

Q. According to your recollection, were the individual questions presented to the Vorstand?

A. Questions concerning France - Transcolor and Rhone Poulenc - were certainly presented there. This was also true of the cases concerning Russia, Norway, Austria, and Czechoslovakia. Concerning Alsace-Lorraine I do not recall what the procedure was. As for Poland, some mention was made of Boruta; a proposed lease, as I recall. I do not remember that actual acquisition was discussed. The names Wola and Winnice were, in my opinion, never mentioned.

Q. As a lawyer, would it have been your task to investigate these measures?

A. No, certainly not. At no time did I investigate contracts or any measures of any nature which were presented to the Vorstand, from a legal point of view if they did not belong to my special field of duties. Otherwise, the entire system of decentralization would have been revoked. Also in view of the abundance of matters to be dealt with, it would have been entirely impossible and pointless.

Q. In your capacity as a member of the Vorstand, did you have any occasion to oppose the transactions, which were first recommended and then approved perhaps because of pressure and coercion exerted on the partner to the contract?

A. I had and have now no occasion to believe that any coercion or pressure existed.

Q. What was your impression specifically, when the Franco-German contract was presented? You said that you did not participate in its creation but that you were once consulted regarding an exchange of experiences.

A. Three important points arose from Dr. von Schmitzler's presentation as far as I was concerned: First, the payment in French shares, which was very favorable to the French, at a very low rate. The rate of 180 was set. Actually, they were worth far more. Secondly, the predominantly important exchange of experiences which was promised to the French factories seemed important to me. I am not a technical expert, but I do know and I know then that in the field of dyestuffs we could give them quite a bit from a technical point of view. Third, I was confronted with the fact of 51% in itself that is conspicuous, but as has already been explained here, the French had the legal right to insist that the chairman of the Verwaltungsrat always had to be a Frenchman. According to the new French corporation law, the chairman of the Verwaltungsrat has a very decisive position; if this position had always been surrendered to the French and if the shares had been split up 50-50 there would have been no parity. For this reason I did not oppose these matters when they were presented. I knew at the time that the French corporation law had been changed and that the position of the president of the Verwaltungsrat was a very strong one. No mention was made of any ^{pressure} whatsoever.

Q Only one brief remark with respect to the translation. I asked you before, whether in your capacity as member of the Vorstand you had any occasion to criticize. If it is correct, occasion should be replaced by reason. Occasion, it seems to me, is Gelegenheit, Veranlassung means a moral duty or some sort of duty. I think that the decision as to this point can be left until later. I just wanted to suggest it.

I now turn to Count Three of the Indictment, with respect to the employment of foreign workers prisoners of war and inmates of concentration camps, and I first of all turn to the question of foreign workers.

Mr. von Kahr, as a lawyer did you have anything to do with labor questions?

A No, I was never concerned with labor questions.

Q But in this field there are legal questions, are they not? For instance, the formulation of employment contracts, questions of dismissal, questions of old-age insurance, etc?

A Whatever goes on in a business enterprise has some sort of legal aspect. Whether you sell livestock, buy coal, buy a house, rent an office, employ clerks, there is always some legal aspect. Labor questions and the employment of workers was dealt with a specific department which concerned itself with labor questions. Social questions, such as old age insurance, were dealt with by the social department.

Q Since the beginning of the war, German workers could be conscripted to any place of work, on the basis of a new Reich law. Did you know about that at the time, and did you have anything to do with it?

A I knew that everyone in Germany could be conscripted for labor. I did not know the details of the regulations. I had nothing to do with them.

Q Didn't you read Reich legal codes or directives issued by the Reich Ministry of Labor, for example?

Q Before the war and particularly during the war itself the entire sphere of any human being's life was steered increasingly by laws,

directives and regulations. If you put all the laws, regulations and directives issued in one year onto one table you would have an enormous pile. Physically, it probably would have been impossible for any human being even to read all these regulations and directives, even if he had nothing but that to do. To make an attempt to read all these laws was not my duty. I had to limit myself to my special field, that was corporation law, patent law, tax law. To read everything in this field in itself constituted a very heavy burden.

Q Did you know that long before the war the labor offices played a big part in the steering of labor commitment. For instance, hiring was permissible only through the labor office?

A I am not quite sure whether I knew that before the war, but I do believe that I knew about it. Naturally, I knew that that was so during the war.

Q Did you know that ever since the beginning of the war, and particularly during the war, there was a scarcity of labor generally and also within the Farben?

A I knew that, and that was a matter of course. Drafting into the Wehrmacht increased, and Farben was under constant official pressure to maintain production and even to increase production in many fields.

Q Did you know that the labor demand was partially covered by foreign workers?

A Yes.

Q Did you learn any details about the way workers were hired from abroad?

A No. As far as I remember, no details were discussed in the Vorstand, apart from occasional statements perhaps about the scarcity of labor.

Q But perhaps some mention was made about these matters at the TEA, the Technical Committee?

A I was almost a regular visitor of the TEA, but often, as I already mentioned, I was present during only part of the conferences. I do not remember that the hiring of labor from abroad was discussed.

Q Did you participate in the conferences of plant managers under the chairmanship of Mr. Schneider?

A No, neither from a legal nor a factual point of view was I concerned with questions affecting plant managers.

Q Was it your impression that the foreign workers came to Germany voluntarily or involuntarily?

A It is difficult to recall what was known at an earlier date about a matter about which one has learned so many new things in the meantime. To the best of my recollection I had the impression then that they came voluntarily. I found nothing unusual in that. During peacetime, many foreign workers came to Germany, for instance, whenever they found no work at home. At the time, I learned through the German press - and that I do remember exactly - that the foreigners were told as an incentive that prisoners of war would be released for exchange whenever foreign workers came into Germany.

Q What was your general information regarding these questions through press, radio, conversations with acquaintances, colleagues in the Vorstand, and trips to neutral foreign countries?

A As far as I remember, the German press at first reported the exchange of prisoners of war for foreign workers, which I just mentioned. Then I remember that much was made of recruitment drives abroad, with the use of a lot of propaganda. The German press probably would not have said anything about conscription in occupied territories or any recruiting by force. I did not listen to foreign radio broadcasts during the war. I do not recall any conversations on this matter. As for trips to neutral foreign countries, I can state the following: In the early stages of the war, I went to Switzerland a few times. Apart from that, I never went to neutral countries.

Q Did you hear anything bad with respect to the treatment of foreign laborers?

A No; never. I thought that that was entirely out of the question with respect to Farben, and I still think it is out of the question; particularly with respect to this point, Farben was famous throughout Germany for its great achievements and for the manner in which it cared for its employees.

Q Did you know that prisoners of war were employed in Farben plants?

A Yes.

Q Did you have no misgivings about the employment of PW's in Farben factories?

A No. First of all, it was not my job to investigate these matters. Labor questions were beyond my jurisdiction. I thought, moreover, that any such employment gave no rise to misgivings. I knew the relevant regulation of the Geneva Convention, which prohibits using PW's for work directly connected with measures of war, in particular the production of armaments and ammunition. Farben is not such a factory, although it certainly was an essential enterprise. Farben, however, never produced any final products of armaments. It was not an armament plant, but a so-called K & L plant. That means "war essential and vital industry." One more observation was important for me in that regard. In Germany, so-called trade registers are kept in the courts. In these registers there are entered the companies, the name of the company, the type of work of the company, excerpts from the charter, names of the members of the Vorstand, etc. These trade registers are accessible to the public. During the war, however, it was not possible to obtain insight into such

registers with respect to armament industry. That, however, did not hold true of Farben.

In addition, you have to consider the fact that during the last war, too, prisoners of war were employed in Farben factories, and nobody criticized that in the least.

Decisive, in my opinion, is the following: I know that the OKW had special supervising officers to see to it, that PW's were not employed in an inadmissible way. These officers visited the individual plants; they were constantly present in larger plants.

Q Did you know that when the Buna plant in Auschwitz was constructed concentration camp inmates were employed?

A Yes.

Q How did you know that?

A I probably learned that concentration camp inmates were employed because of a brief visit I paid to the Buna plant at Auschwitz in the fall of 1942. I had nothing special to do in Auschwitz, and the visit came about in the following way:

I had been in Berlin, and two days later there was to be an Aufsichtsrat meeting of the Amorgana at Dyhernfurt. Ter Meer and Ambros were also in Berlin. They too wanted to attend this meeting of the Aufsichtsrat. However, they did not want to go to Dyhernfurt directly, but they wanted to go by way of Auschwitz, because they had some technical discussion there -- at least I assumed that. They asked me whether I would like to go with them and make that detour so that we could all make the trip together. I agreed. We went to Breslau during the night, arrived there in the morning. As far as I remember, we were late. Then we changed to another train and went to Kattowitz, I believe, and then we

went by car to the construction site of the Buna works. In the course of the morning we arrived at the administrative building and there charts were on hand with the aid of which the situation of the construction work and the way in which it was being carried out were explained to us. Afterward we went through the construction site, that is, we looked at the plant which was in the process of construction. I did not enter the camp of Monowitz. I did not see the concentration camp of Auschwitz, either.

During the afternoon I separated from the others and inspected an agricultural estate belonging to Karbon which was situated nearby, as I am interested in agriculture.

I think that the engineer Eisfeld accompanied me. I am not quite sure, however, because I didn't know the individual gentlemen who were employed at Auschwitz until I met them on that very day.

Q What was your impression at this inspection?

A I noticed nothing which could be criticised, and I saw nothing in any way contrary to order. I saw no so-called figures of misery, and naturally I saw no mistreatment. That, I am sure, I would have remembered. Unfortunately nobody could change the fact that concentration camps existed in Germany. I had to believe that it was probably an improvement for concentration camp inmates to work in a normal factory, as opposed to working in a concentration camp. That there was anything abnormal about the type of work, I couldn't observe during my inspection, and I am quite sure that there was nothing abnormal.

Q Did you at any time hear of mistreatment of concentration camp inmates in the construction at Auschwitz at the time, I mean?

A No; never.

Q The Prosecution asserts that you and all other defendants knew that concentration camp inmates were exterminated by gassing at Auschwitz and other concentration camps. The Prosecution asserts that you should have had the same knowledge as was known abroad, allegedly. The Prosecution argues that you also knew of the attacks on Standard Oil during the war for collaboration with Farben.

A I didn't know anything at all of all that, and I don't quite understand the argumentations of the Prosecution. Technical periodicals occasionally reached Germany, as for instance the one technical periodical which I already mentioned which contained the lecture of Heslam of Standard Oil. If such matters, from which it became apparent from the Standard Oil had been attacked, reached Germany, then it is not surprising that they came to the knowledge of Farben, because Farben was mentioned on every page of that article. Farben had hundreds of thousands of employees, and everyone who receives a thing like that would certainly show it around in Farben circles.

Q Before this trial, did you know anything of Zyklon B? Did you hear of it?

A No, I did not even know the name.

Q With respect to these individual points, there is more I could ask you, but because of the time which is now at our disposal I should like to put only one more question to you.

Q Up to now you have been asked mostly about matters which could be in connection with your sphere of work or in connection with which your name appeared. Beyond that, however, the Prosecution in respect to all counts of the

indictment, and in particular with respect to the main subjects of the indictment -- Counts 1, 2, and 3 -- has charged all defendants, including you, with an abundance of individual crimes, without substantiating them in detail, without giving any explanations with respect to the individual participation of the defendants.

In order to be brief, I will name a few examples: espionage, a few individual cases of alleged plunder, and spoliation, the execution of experiments on concentration camp inmates with the use of Farben drugs.

Therefore, for formal reasons, I have to put the general question to you: Do you feel that you had a share in all these matters, and what is your opinion with respect to the assertion of the Prosecution that you shut your eyes knowingly to all the crimes and the evil situations which were prevalent?

A I feel that I in no way participated, and I must state the following: I was then convinced -- and I am convinced now -- that as far as Farben employees, directors, or members of the Vorstand were active and competent everything was carried on in an orderly manner and nothing criminal occurred. As far as I myself am concerned, I had nothing at all to do with these things. That is why we split up our organization into departments. Otherwise, all division into departments would have been pointless. Orderly work would have been impossible in such a huge enterprise. Otherwise, everyone would have had to concern himself with the work of the other. With respect to the so-called shutting of one's eyes, which plays a considerable part in the indictment, I should like to state the following: One can shut one's eyes only to something which one has noticed or

which one would have to notice unless one shuts one's eyes. But all these matters did not enter my field of vision. As far as I know, on the basis of the division within a firm, one is not obligated to concern oneself in the affairs of other departments if one has no reason to believe that something is not in order. Let me cite an example --

Q Let that be your final sentence, Mr. von Knieriem.

A If, for instance, something had really been wrong with the exchange of experience with Standard Oil, then one could not now state that my commercial colleagues shut their eyes to it. They certainly would not have had any reason to do that.

THE PRESIDENT: The Tribunal is in recess until one-thirty.

(The Tribunal is in recess until 1330 hours, 9 Febr. 1948.)

AFTERNOON SESSION

(The Tribunal reconvened at 1330 hours)

THE MARSHAL: The Tribunal is again in session.

DIRECT EXAMINATION

AUGUST VON KNIERITZ, Resumed

BY DR. FLAEGENBERG (Counsel for defendant Buetefisch):

Q. Mr. von Knieritz, to what extent were you informed about the problem of Fuerstengrube G.m.b.H. in Kattowitz?

A. Until the spring of 1944 I was informed only from the reports which Mr. Buetefisch rendered in the Vorstand. I believe he reported several times. As far as the details about Fuerstengrube touched upon legal questions, they were handled by the Legal Department in HW-7. In the spring of 1944 I received a letter from Mr. Buetefisch in which approximately the following was stated. In Dresden, negotiations would take place lasting several days, between the Flosschen Mining Administration, I.G. Farben and the Fuerstengrube. In the course of this case, it has become known that Farben had fifty-one percent and the Flosschen Mining Administration forty-nine percent of the shares of Fuerstengrube.

During this discussion a reconstruction of the relationship of Fuerstengrube to the two mother companies was to be effected, and very difficult questions of taxation and finance were going to be discussed; also questions of the organization of the enterprise were to be discussed. These were things in the field of work. Therefore, Buetefisch asked me to participate in these discussions. I did so, and I was present during these discussions.

Q. Mr. von Knieritz, did you ever learn anything about the fact that any pressure was exerted upon the Flosschen Bergwerk A.G., in regard to the foundation of the company with the Fuerstengrube G.m.b.H.

fifty-fifty ratio. Besides that I had the impression--and I believe that was correct -- that the entire affair that I talked about a short while ago was solved absolutely in the interest and in favor of Fless.

Q. In connection with the Dresden negotiations, and already before that time, since the Fuerstengrube was founded, and also during the later development of this affair, could one speak about a one-sided predominance by Farben over Fuerstengrube?

A. My impression is confined essentially to these Dresden negotiations. I said already, that in these negotiations, certainly, one could not gain such an impression, but only the impression that Fless was considered as a partner on completely equal terms.

Q. I now turn to another subject, Exhibit 519 of the Prosecution. That is Document HI-7319, Document Book 26, English page 65.

Dr. von Klerien, this is an interrogation of the 21st of April, 1947 here in Nurnberg, presented only in excerpts by the Prosecution. At the end of the record of this interrogation, you made certain statements about the profitability of the hydrogenation process, and you told the interrogating officer that in 1932 Farben was confronted with the question as to whether they should invest further funds in hydrogenation, or whether they should terminate the entire business of hydrogenation.

A. No, not in the least. I always had the impression that this was a fair and friendly, completely voluntary cooperation of the two partners.

Q. The details of the Dresden negotiations don't have to be dealt with by me, but I should be grateful to you if you would briefly describe the essential economic problem concerned in this case.

A. The following was concerned. Fuerstengrube was to be extended. Such an extension was also in the interest of Pless. It cost quite a lot of money, however. Pless was not in a very favorable financial condition at the time. Pless desired the extension as such, but they could not participate financially to the extent in which its forty-nine percent participation in Fuerstengrube ordinarily would have demanded. However, it desired very much to retain its participation at forty-nine percent. Therefore, a way had to be found. We found this way by means of a very complicated financial construction which had to do with the creation of a so-called organic relationship.

Q. We don't have to deal with these things any further. I am principally interested to hear from you whether the extension of Fuerstengrube, for which you wanted to procure the funds, was caused by orders of the authorities, or whether it was caused by the voluntary initiative of the administration of the Fuerstengrube G.m.b.H.

A. I don't know that. I cannot answer this question.

Q. During the course of these negotiations, was the Plessische Berleburg A.G. out voted by Farbon, or did Farbon try in any way to force any solution upon the Plessische Berleburg A.G.?

A. I don't believe that one can speak of any out numbering. To my recollection I have the impression that the negotiations were carried on in respect and harmony and equanimity. I should say that if there had been any impartial witness at these negotiations he would have gained the impression that the two enterprises participated on a

Q. (Continued) During your examination you have repeatedly and justifiably pointed out that you as a lawyer, were not an expert about technical matters and technical economic matters. Therefore, I merely wanted to ask you, as far as you know, did further development experienced by hydrogenation in regard to its profitability — did it justify the fears which were harbored in 1932, or did it not justify such fears?

A. I stated already, and I said at the time that I was interrogated that as a lawyer, I was not very well informed about these difficult questions of profitability, and on my own, of course, I could not foresee the possibilities of development as an expert might have done.

I did not watch development closely anymore in the future. It may be that it took a different course.

Q. I now turn to another document, that is document NI-6925, an additional document to those contained in Book 51. It is the so-called, "Japan contract".

THE PRESIDENT: Counsel, it will make for a better record if you can give us the exhibit numbers. If you cannot, please do not delay.

DR. FLAESCHNER: Exhibit No. 1055, Mr. President.

THE PRESIDENT: Thank you very much.

BY DR. FLAESCHNER:

Q. Dr. von Knieriem, the document before you contains a memorandum about a contract in the field of hydrogenation, concluded by Farben at the beginning of 1945, upon the request of the Economic Ministry and Foreign Ministry with Japan.

Do you know that this contract was worked out in Ludwigshafen?

A. Yes.

Q. Do you know whether Farben provided for a preamble as you can see in the document before you?

A. I remember that that was not provided.

Q. Thank you very much.

Then I can turn to another subject matter. I should like to have you look at Exhibit 731, NI-4690, from Document Book 39; you are familiar with the document?

A. Yes.

Q. Mr. von Krierem, according to this document you participated in negotiations in London about the purchase of fuels, and also of aviation gasoline. Can you tell me what the proportion of the aviation gasoline was in the entire sum of fuels that was purchased?

A. It is true that I was in London and participated in the negotiations on this contract, but since that time I never saw it again, and I cannot answer your question with any amount of exactitude. However, I can tell you, the first question of the interrogation, which record I have before me now, reads as follows: "What are the facts in regard to the purchases of aviation gasoline in the amount of 20 million dollars, which Farben bought for the German government?".

I then told of the facts, but I did not mention the following. At that time we were certainly not concerned only with aviation gasoline, as one might be led to conclude from the question, but at the same time we were also concerned with automotive gasoline, lubricating oil, gas, oil and liquid fuel. What the proportion of these products were, and how they were bought, in what proportion, I do not know any more. I do know, however, that the contract only granted the right to procure these things up to the total value of 20 million dollars, and that it was not exploited to its fullest limit.

I see now, by the way, that this is mentioned in the interrogation. I said that I believed that an amount of only 14 to 15 million dollars was used, and that is till my opinion now, to the best of my knowledge and recollection.

Q. But please tell me who concluded these negotiations principally on the part of Farben, besides yourself.

A. Krypuch, who was in Berlin at the time, one day arrived in

Ludwigshafen, and informed us that the Reich Minister of Economics, Schacht, had spoken to him, and had made that request to him. He, Krauch, had then agreed to the request and as a result Krauch, Schmitz and myself, and Fischer, went to London.

Q. Thank you very much. That is sufficient.

DIRECT EXAMINATION

MR. VON KNIERIM

BY DR. HOFFMANN: (Counsel for the defendant Ambros)

Q. Mr. Witness, were you in the Aufsichtsrat of the Anorgana?

A. Yes.

Q. Do you know what plants are operated by the Anorgana?

A. Gendorf, Dyhernfurth.

Q. Do you remember any more?

A. No.

Q. Did you have any misgivings to be represented in the Aufsichtsrat of the Anorgana?

A. No, I entered in 1941 — in the Spring of 1941.

Q. Whatever you learned about the business policy of Anorgana gave you no reason for objection?

A. No.

Q. Were you in the Aufsichtsrat of the Montoron?

A. I believe Montoron was a corporation which was in connection with the last project that was not completed any more, and that it was the factory in Falkenhagen. I know that negotiations were conducted about this affair, but I do not remember for sure whether Montoron was actually founded, and I must admit, frankly, that at the moment I do not know whether there was an Aufsichtsrat already and whether I was in it. I do not know; I believe not.

Q. Thanks, that is enough. Do you know anything about the Montan contracts?

A. Yes.

Q. Can you tell me approximately what a Montan contract is?

A. Yes. The Montan contracts were constructed as follows. First of all, a contract was concluded between Farben and the OKW. We called this a "cover contract". If it has been translated as "cover agreement" it is probably correct, but I want to say that "cover" does not mean that it was covered up as a secret matter. It was an Omnibus contract, a cloak agreement, but not in the sense of secrecy.

This cover contract usually contained the following. Farben was to obligate itself to erect a certain plant at the expense of the OKW and on the territory belonging to OKW. They were to be in charge of construction and erect the buildings and should then operate the plant on the basis of a lease contract. That was, so to speak, the basic contract, which provided for further construction contracts, and lease contracts.

Now, the OKW founded the Montan-Aktiengesellschaft for the interest of the Reich, which was owned by the Reich to 100 per cent, Farben, so far as I remember, founded Luranil, a construction company, and then Montan and Luranil concluded a construction contract. As far as the operation was concerned, a further contract was concluded. That was the lease contract, and usually by the Auerghans concluded that contract and it was owned to 100 per cent by Farben and Montan.

Q. Thank you very much. Mr. Witacze do you know whether these Montan contracts were more or less^a compulsory order of the Reich towards Farben in certain chemical fields?

A. Yes, I believe that certainly, especially in the field regarding Dyhernfurth. There was certainly a force exerted by the Reich because Farben did not want to have anything to do with it.

Q. Witness, may I revert briefly to your visit in Auschwitz?

A. It was in October of '42. Just wait a minute. I wrote it down. In the autumn of '42, it may have been in October; probably around October.

Q. Witness, you had never been in Auschwitz previously?

A. No.

Q. If I understand you correctly, you saw a concentration camp for the first time there; I may be mistaken but that is what I understood?

A. Yes.

Q. Can you describe to me what sights you saw there? How were the inmates clothed; was it cold?

A. I must admit frankly that my recollection has been somewhat quite blurred. I merely know that I went through the factory and that there were concentration camp inmates and that I saw them, of course, but I can only tell you with certainty that if anything had been there, that was in any way objectionable, or which would have aroused my pity, or would have been remarkable in any way, I would certainly have noticed it, and I would remember it now.

Q. Mr. Witness, only one little question. If Aschers had to answer any legal questions in his capacity as chemist, to whom did he turn for information?

A. His legal consultant and collaborator was Dr. Diltor. Of course he talked to me about it too.

Q. Witness, did I understand you correctly that all of this legal work in Farben was checked over by you in your capacity as a legal expert?

A. Yes, I did; if there had been any inadequacies I would have taken steps. But the legal departments were very independent and they even engaged lawyers on their own, but I knew them, and Dr. Diltor certainly was a very able and reliable person.

Q. So far as you can remember matters, you had no objections as to the person and knowledge of Dr. Diltor?

A. No, certainly not against Dr. Diltor.

THE PRESIDENT: Just a moment please. Dr. Silcher, may I ask you while I think of it, as to what you intended to do with your Documents 27 and 28, in your book 4?

DR. FEICKMAN: May I answer this question? These are the last two documents, Mr. President. I wanted to offer them after the cross-examination had been completed.

THE PRESIDENT: Now that would not be objectionable, but it might extend the cross-examination because counsel for the Prosecution would not be at liberty to cross-examine the witness about these documents if they had not been introduced.

DR. FEICKMAN: I do not know whether the Prosecutor intends to cross-examine about these documents.

THE PRESIDENT: Very well, it is not serious in either event.

DIRECT EXAMINATION

DR. AUGUST VON KNIEREM

BY DR. ASCHENHAUER (Counsel for the defendant Gattineau):

Q. I have only one question Witness, you testified that you had not met any leading National Socialists with the exception of Frank, as Reich Commissar of Justice, and Ley, during an inspection. Did Gattineau arrange for the meeting of those persons?

A. No.

DR. ASCHENHAUER: Thank you very much.

THE PRESIDENT: Is there anything further from counsel for the Defense?

Then the cross-examination of the Prosecution may take place.

CROSS EXAMINATION

DR. AUGUST VON KNIEREM

BY MR. ALCHAM FOR THE PROSECUTION:

Q. Dr. von Knieriem, you were an infantry officer in World War I; is that correct?

A. Yes.

Q. And you were wounded in 1914 and then hospitalized?

A. Yes.

Q. And thereafter, in April 1915, you were assigned to the Ministry of War in Berlin; is that right?

A. Yes.

Q. And did you there deal with, among other things, matters relating to the questions of supply, allocation of priorities between military and civilian as to fuel?

A. Yes, it was not stated quite correctly, but I was in a department whose main work dealt for the most part with the so-called war raw materials department, and among other things I worked as an assistant to an expert on the allocation of gasoline, benzol, and such materials, for civilian requirements.

Q. And did your work also deal with the preparation of contracts with German industry for the construction of plants to produce war material?

A. Yes. I had to deal with that also. I helped in the conclusion of contracts between the Reich and the German industry.

Q. And in 1919 you left the Ministry of War; is that right?

A. Yes.

Q. And later in that year, you were asked by Badische Anilin und Sodfabrik to assist them in their negotiations with the German government relating to the Luna Plant; is that right?

A. That is correct.

Q. And that plant was financed by the German government during World War I; is that right?

A. Yes, that's correct.

Q. And you later helped organize the Nitrogen Syndicate, and

acted as its counsel; is that right?

A. Yes.

Q. Until when were you a member of the Nitrogen Syndicate?

A. Until October, 1922.

Q. Now as a member of the Central Committee of the Vorstand, did you ever object to any of the contributions made by I.G. Farben to the Nazi party and its affiliate organizations?

A. No.

Q. Now you testified that many donations were not decided on in the Central Committee; that donations may have been known to the office of the Central Committee, but that does not mean that they were approved by the Central Committee or that the Central Committee members were informed; did you so testify?

A. Yes, that is approximately what I said.

Q. And you stated, did you not, that you know nothing of the 100,000 Reichsmark to the SS or of the donations to the German Sudeten Free-Corps; is that right?

A. Yes, in regard to the second organization, I said that to my definite recollection it was not discussed in the Central Committee.

Q. Now I show you the photostat of Exhibit 834, which is HI 1312, and I ask you to please look at page 4 of the German, and could you please explain to me, the significance of the appearance of your name on the distribution list in connection with the contribution to the Sudeten Free-Corps.

A This is a letter of the Central Administration Office of a certain date. It reads: "Dear sir, we take the liberty of informing you that after consulting Dr. Schmitz we now donate the amount of RM 100,000 for the Sudeten Aid, and the Sudetenland Free Corps. At the bottom are listed the names of all Vorstand members.

Q Is your name included?

A Yes, my name is included and these people listed are the addressees of the letter. Otherwise it might be a false reproduction. I would conclude if that is correct that the Central Administration Office subsequently informed these gentlemen about the RM 100,000 donation.

Q What is the date of that letter addressed to you?

A 22 September 1938.

Q Is that not the same date the contribution was made?

A I don't know. It doesn't contradict what I said. I said that in the Central Committee, as far as I knew, this was not discussed and it cannot be seen from this letter that it was so discussed. On the contrary, it is disclosed that after consulting Mr. Schmitz "we have today made this payment." It is directed to all members of the Vorstand and also to the members of the Central Committee.

Q Now, you heard Dr. Krauch testify that Schmitz asked his advice whether to make a contribution to the SS. Did you hear that testimony of Dr. Krauch? Do you recall it?

A Yes, I believe I remember.

Q Did Dr. Schmitz discuss that matter with you, too?

A No. You are now speaking about the RM 100,000 given to the SS?

Q That's right. Were you informed at that time, and I am speaking about the time of the contributions to the SS, of the steps that Farben was taking to secure the release of Mr. Weinberg from the concentration camp?

A I don't believe so. Not at the time. I think I learned of this later.

Q When do you think you learned of it? Can you fix a date?

A I cannot. It might even be that I learned of it only during conversations with my colleagues during imprisonment. It is so difficult to separate these dates as to when one learned of them. I am not quite sure.

Q Could you tell me definitely whether or not in the years 1941 and 1942 you knew that Weinberg was in a concentration camp and that Farben officials were making efforts to get him released?

A No, I cannot do this with certainty.

Q Who was Mr. Weinberg, that we are referring to?

A This was Arthur von Weinberg, one of the two brothers. He was a member of the Verwaltungsrat.

Q An employee of I.G. Farben?

A Yes, of I.G. Farben.

Q Do you know now that it is a fact that he was in a concentration camp around that time and died in a concentration camp? Do you know it now?

A I know now that he was in Theresienstadt and I have heard now that that was a concentration camp which I did not know previous to my imprisonment.

Q Is it correct, Dr. von Knieriem, that you first suggested to the Vorstand that a Vermittlungsstelle-W be created to act as liaison between I. G. Farben and the various military agencies of the Reich?

A No, that's incorrect. That is not right. The Vermittlungsstelle-W was discussed, at any rate, according to the Prosecution Document, at a meeting of the Central Committee at the time when I was a member.

Q Now, I show you Exhibit 334 which is NI-5187 which is an affidavit of Dr. ter Meer and will you please look on the second page where he says: "I believe it was Dr. von Knieriem who took the matter up before the Vorstand to establish the Vermittlungsstelle-W," and I ask you whether that refreshes your recollection as to whether or not you first suggested to the Vorstand the setting up of Vermittlungsstelle-W?

DR. PELCKMANN: Mr. President, unfortunately I have no copy of this document.

THE PRESIDENT: Is it in evidence?

MR. ANCHAN: Yes, it is.

THE PRESIDENT: You mean you do not have it here?

DR. PELCKMANN: Thank you. I thought it wasn't offered into evidence.

A May I point out to you, Mr. Prosecutor, this is not an affidavit of ter Meer. It's a passage in an affidavit where he quotes a statement of Dr. Schmitz and the purpose of his work is to prove that the statements are incorrect in many points. It is correct that in the document before us now ter Meer states that, and then there's paragraph with this statement of Schmitz which Dr. ter Meer contests, and he does so decidedly, this does not refer to ter Meer but to Dr. Schmitz and it's just as incorrect as a whole number of other statements of Dr. Schmitz.

Q Then I take it you dispute the reference in that document; is that correct?

THE PRESIDENT: The witness I think, Mr. Prosecutor, has definitely answered that. He does deny it.

Q Is it also correct, Dr. von Klierian, that the Vermittlungsstelle-W was created after your report to the Vorstand of the conference with General Thomas of the High Command of the Wehrmacht?

A I didn't understand.

Q I said, is it correct that the Vermittlungsstelle-W was established after you reported to the Vorstand about your conference with General Thomas of the High Command of the Wehrmacht?

A No, I don't believe that's correct. I don't have the documents at the moment but the Prosecution presented a letter of Krauch in which Krauch states that the Central Committee in its meeting of a certain date had resolved to found a Vermittlungsstelle-W. Through this letter, which the Prosecution themselves offered, you have the date of its foundation.

It is correct that at one time I, together with Krauch, attended a talk at General Thomas'. In this discussion we treated those matters which I specified quite distinctly on Friday. We asked him to create an agency to which one might turn in order to be quite sure, when dealing with foreign countries, not to be prosecuted for treason. I probably, or possibly reported about this discussion in the Vorstand. I might be able to fix the date but at the moment I don't have any documents with me. I do not believe that this discussion was cause for the foundation of the Vermittlungsstelle-W.

Q Now, in your discussions with Gen. Thomas of the High Command of the Wehrmacht did you not point out to him the advantages which the German War Ministry had received from Farben turning over to the War Ministry processes which Farben had secured from American industry which were important for the conduct of the war? Did you point that out to General Thomas?

A It may certainly be true that I explained to General Thomas of the existence of the necessity of an international technical co-operation and in that connection it might very well be true that I pointed out that during such a co-operation, not only German experiences would be given abroad but that vice versa, foreign experiences would come into Germany which is, quite a matter of course. It may be that I discussed this point but I don't know any more details.

Q Now, I had you the photostat of Document NI-14002 which I ask be marked as Prosecution Exhibit 1868 for identification which we shall later offer in evidence and tell me, Dr. von Knieriem, whether or not that document refreshes your recollection with respect to your discussion with General Thomas along the lines I mentioned?

DR. PEICKMANN: I am sorry to say that I do not have this document, Mr. President.

THE PRESIDENT: Do you have a copy of it, Mr. Prosecutor?

MR. ALCHAN: I am sorry. I only have the German photostat and

English which I have to use on examination. I will try to in the future to see if I can get another copy.

THE PRESIDENT: For the moment let the document be handed to counsel for the defense first so he will know what's going on. Dr. von Knierian, will you let your counsel have your document for a moment? Perhaps you both can look at it at once, if you care to.

MR. ALCHAN: Your Honor, I have just been informed we can use the Secretary's copy here.

A I know this note. It originated with me. I wrote this after the visit with Thomas where I was together with Krauch and I wrote it at the request of Mr. Krauch and dictated it a few days later because General Thomas asked us for some documents. I know the document. I don't have to refresh my memory. I knew this all of the time and, moreover, it is generally quite similar to what I testified to on the witness stand, the necessity of working together with foreign countries and the great difficulty for industry to decide on their own responsibility what can be turned over to the foreign countries and what cannot and the request that Thomas might name an agency. That's what I can see at the moment.

Q Do you see anything in that document which refreshes your recollection as to the benefit to the War Ministry from Farben turning over to the War Ministry processes which Farben received from American industry?

A Yes, this is the very case that I talked about during my direct examination. The case that the process for tetraethyl lead was given to us and the same thing is contained in this document as what I said on the witness stand; that the War Department in Washington had given permission after long consideration that the American heavy industry should turn this important over to German industry. This is the very same case I told you about on the witness stand.

Q Will you please give me the date of the document?

A 4 October 1935.

Q Now, General Thomas was the highest official in the High Command with respect to military economic questions; is that right?

A He was a colonel at the time. I don't know if he was the highest. I don't believe it.

Q Now, were you generally informed as to the activities and operations of the Vermittlungsstelle after its creation in 1935?

A I know that part of the exhibit dealing with Vermittlungsstelle. That had to do with my field of work and that was the treatment of the intended registrations (of patents) abroad and the treatment of intended contracts to be concluded with foreign countries and occasionally the question as to whether we were able or whether we should turn over certain information to foreign countries or not. The very same activity described by me already on the witness stand which is described in very much detail by the affidavit Holdermann which I offered. I don't remember the exhibit number.

Q Were you consulted about the setting up of Section A for counter-intelligence matters in the Vermittlungsstelle-W?

A Never.

Q Do you know that Herr Morbeck was made head of this counter-intelligence section of Vermittlungsstelle- after agreement with the military agencies? Do you know that?

A I do not remember. I really had nothing to do with these questions at any time. It's possible that I know him Mr. Morbeck's main position was mostly in counter-espionage in industrial plants for as long as I have been active in Essen, he was active in Leverkusen and was a specialist in the field of industrial counter-espionage already in the middle of 1926, as far as I know. His later activity, I am not able to produce anything further.

Q I show you a document which is NI-14022, Prosecution Exhibit 1869 for identification which is the minutes of the legal committee of 30 September 1935 at Frankfurt and I ask you whether or not this document refreshes your recollection about your participation in the setting up of a counter-intelligence unit in the Vermittlungsstelle-W?

A From this the following can be seen: my memory is not refreshed but I see that something is discussed here. The necessity is discussed of treating industrial espionage centrally.

Q Do you see there any reference to Herr Morbeck?

A One minute; that an agreement has been achieved about the fact that after permission of the military authorities the Central Agency in Leverkusen should be informed about the most important cases. It seemed necessary to discuss these questions within Farben and Prof. Selck was going to ask people to attend a conference in Frankfurt and in which Dr. Wagner, von Knieriem, Brueggemann and Herbeck and the other experts of the other work combines were to participate beside himself. After the matter has been classified Prof. Selck will deal with them in the next plant-leader's conference called to discuss technical matters. From this the following can be seen; in Farben, as long as I know Farben, we had always had some organization which was to serve the purpose of industrial counter-espionage. The chief of this was Herbeck and it is also discussed here. It can be further seen that a discussion was to be held in Frankfurt, where I was to be invited. Whether this was actually held or not I cannot tell you. I don't have the vaguest recollection any more. This whole question seems very insignificant, for we have had this always in Farben.

Q When did you first learn that the Montan plants were built exclusively for war?

A During my examination in chief I have already stated that Dr. Buhl worked on these Montan questions and that after his death in the beginning of spring of 1941 I took over the work on the contracts.

Q Is that the first time that you learned of the Montan plants in 1941?

A No, I don't want to claim that. It may be that I heard about it earlier, but as far as I remember I didn't work on these questions.

Q You testified on your direct examination that you knew in 1935 of the agreement between I. G. Farben and Orgacid at Luxemburg and you said that it was nothing unusual or significant about that. Did you so testify?

A I testified that I certainly knew of an perhaps even signed

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a contract in 1935, at least a contract between Farben and Orgacid. In this contract Farben grants Orgacid a license, obligates itself to establish a plant and is paid in return I believe altogether RM 120,000 something like that. I said that, as such, this contract did not seem very significant to me.

Q. Now, I show you Exhibit 351 which is VI 5681, which is the copy of that contract. I call your attention to Article 1 and I ask you to please note the reference to Montan. Could you tell me now whether that refreshes your recollection whether at that time you heard of the Montan Plant and knew of them.

A. Well, if I signed this contract I probably read Paragraph 1 as well, but Montan is here cited in another connection. It is, so to speak the introduction. Orasid constructs on behalf and at the expense of Montan a certain plant, and Orasid commissions Farbon to build this plant and grants the license.

Q. Now then, will you please look at Article 5 and tell me whether or not the secrecy clause there set forth was a usual clause at that time.

A. It was certainly used. As far as I remember it certainly happened that during contracts about exchange of experiences we incorporated such a clause. There is nothing remarkable about that.

Q. Do you recall whether this contract was discussed in the TEAM

A. I can't tell you that.

Q. Now, in March of 1937, you corresponded with Goldschmidt of Orasid in connection with a controversy which arose between Farbon and Orasid and where Farbon demanded that it be represented on the Aufsichtsrat of Orasid. You referred in your testimony to that and said that you approached Goldschmidt on a personal level and that you do not otherwise recall the transaction. Did you so testify?

A. Yes, I said that I didn't remember.

Q. Now, I show you Exhibit 625, which is VI 7275, and ask you to please point out whether there is anything in that correspondence that suggests that you were dealing with Goldschmidt on a personal level and not as an official of Farbon.

A. This is the letter that I talked about on the witness stand -- a letter to Goldschmidt that I signed. I have already discussed this letter.

Q. Was that an official letter of Farbon or a personal letter of your own?

A. That was, of course, an official letter of Farben, although I am astonished about the signature. I'd like to see the original of this letter. It is remarkable that I signed I.O. Farben Industrie A.G. and then only my name. That is quite unusual. There were always two names.

Q. We'll try to furnish you with a copy. This document, incidentally, has been in evidence three months now.

THE PRESIDENT: Well, counsel, if the witness needs the original document in connection with his testimony he is entitled to have that and will you see that he is furnished a copy of it.

MR. ALCOCK: All right.

BY MR. ALCOCK:

Q. Could you please tell me why did Farben at that time demand the seat on the Aufsichtsrat of Orgeloid?

A. No, I can not tell you. I assume that this desire probably originated from gentlemen in the sales machine chemicals and I assume further that they were interested in this because of shipments of chlorine or such like — that they expressed the desire first. I don't know any more.

Q. Was it customary in the way Farben did business, for you, as chief lawyer, to undertake to correspond with a business associate without being familiar with the nature of the correspondence of the subject matter?

A. Of course in important questions it was not customary, but if in any matter which I did not consider very significant at the time, I had a letter submitted to me which Mr. Seachler had already discussed — Mr. Seachler was the lawyer then — with the experts, and then this letter will probably bear the dictation note E.O. without, and then I can probably admit that I signed such a letter without informing myself any further, I didn't have to have any misgivings if somebody asked for an Aufsichtsrat position. It is furthermore possible that I was told about it, but I already stated upon direct examination that I only have a very vague recollection of these affairs and if you had not shown me your exhibits I wouldn't have had any recollection.

Q. Did you know then that the Amersdorf plant was constructed to produce ethylene oxide and di-lycol as an intermediate for explosives and poison gas?

A. I have already answered this during direct examination. I stated that I did not believe that I knew of the connections at the time and that I believe that I learned of this only in the Spring of 1941 — that is to say about the poison gas circumstances — when I entered the Aufseherstab of the Amersdorf.

Q. Now I hand you Exhibit 361 which is VI 5681, and that relates to the contract between Farben and Orgasid, and I call your attention to page 3 of the document, a statement which says that Polyglycol is produced at the Amersdorf plant will be exclusively used for the production of mustard gas. Now, could you tell me whether that refreshes your recollection?

A. In the copy that you handed me there is nothing mentioned about mustard gas. It is called Dichloro-diethylsulphide. I don't know what that is. I don't know now what this is and I probably didn't know at the time what it was if I saw it. It is quite possible that I signed contracts especially if they were not very significant about any chemical process in particular without knowing the last little detail and consequences of this particular process.

Q. Did you know generally what the new plant at Amersdorf, what its production was to be used for when it referred to the product of dichloro-diethylsulphide? Did you have any general idea what the production was for?

A. I can not tell you that now. I don't have any recollection.

Q. Do you recall the testimony of the witness Elise that Dichloro-diethylsulphide was mustard gas? Do you recall that?

A. I don't remember.

Q. Do you know now that it's mustard gas?

A. Yes, you are telling me that it is.

Q. Well, do you know without my telling you that it is?

A. No.

Q. Now, as chief attorney for Farben, you were informed, were you not,

of the main or principal contracts to be executed by Farbon?

A. Can you please repeat the question?

Q. I say, as chief attorney for Farbon, were you informed of the main or principal contracts to be executed by Farbon.

A. I described my position and the extent to which I was informed very much in detail during my direct examination. I can not admit that a license contract with a capital of 100,000 marks was one of the most important contracts.

Q. My question is the main or principal contracts of Farbon. Were you informed, as chief attorney, of these type of contracts which were to be executed by Farbon? The question is the main or principal contracts.

A. Yes, I can not answer that with a simple sentence. This is to be elaborated as I explained the situation. The contracts were worked out in the local departments and when they had been worked out there, then in the manner described by me, the question of collision was checked, and then the most important contracts were submitted to the Vorstand. So that extent you are right when you say that the most important contracts are submitted to the Vorstand and that I therefore was informed about the most important contracts.

Q. Now, the Central Department for Contracts was located in Danzig, isn't it? In fact it was right next to your office, is that right?

A. Yes.

Q. Was it right next to your office?

A. Yes, yes, quite so.

Q. And all contracts which came to this Central Department for Contracts were sent to your desk, isn't that right?

A. No, that is not quite correct. I explained how it was. Those contracts which had any danger of collision in them, they were sent to the Central Agency for Contracts and they were checked as to that danger. Many of them passed over my desk. Not all of them necessarily. Some contracts, where such a danger of collision did not exist were not at

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all sent to the Central Agency for Contracts.

MR. ANCHUT: This might be an appropriate time, Your Honors.

THE PRESIDENT: The Tribunal will rise for its afternoon recess.

THE PRESIDENT: The Tribunal is again in session.

BY MR. ANCHUT:

Q. Now, Dr. van Klorien, just before the recess you requested to be shown the original of the photostat of Exhibit 625, VI 7275, since you had some question as to your signature. Did you see the photostat of that document during the intermission?

A. That is the document of the 13th of March?

Q. That's correct.

A. Yes. Dr. Boeckler's dictation initials are shown and it is signed I.O. Zarbon A.G. and my name. Only one name.

Q. I believe the last question put to you was whether or not all contracts which came to the Central Department for Contracts were sent to your desk?

A. No.

Q. Was it the regular practice of the Central Department of Contracts to send to each of the so Sparta heads, namely, Krauch or Schneider, Tor Meer and Gajowski, a copy of each proposed contract?

A. This is how it was. Danger of conflicts arose, particularly in the technical sphere. It was therefore customary that the Central Office sent the contracts to the three Sparta heads and to a few other agencies. For Sparte I they went to the Sparte Office Ossen. In the case of Sparte III they were sent to Mr. Gajowski.

Q. Now do you recall, Dr. van Klorien, being interrogated on April 22, 1947, and I show you a copy of your interrogation and I ask you to please look at page 12.

THE PRESIDENT: Mr. Prosecutor, is that in evidence or do you have it only for identification?

BY MR. ANCHUT:

I think I'd better mark it. I'm not sure now whether that's in evidence. It's not in evidence and I think we had better mark it which I ask that it be marked as Prosecution Exhibit 1870, for identification, which is

SI 13599.

Q. Now, I direct your attention, Fr. von Knierem, to the middle of page 12 and I ask you whether you didn't state the following on examination:

"I must mention one thing. In one of my statements about Legal Committees, I told you that the contracts were sent to the Central Department for Contracts and it was usually to make three copies and to send a copy of each proposed contract which had been sent to the Central Department for Contracts to three outstanding technical men within I.G. To the three leaders of the three divisions -- Sparto. And one was Ter Meer. Sparto I was headed by Krauch and Schneider; Sparto II which was by far the greatest one, by Ter Meer; Sparto III was headed by Gajewski. Now I know that the copy for Ter Meer, as far as I remember, was sent in his branch to Ter Meer.

Q. Did they also send you a copy of these contracts?

A. I didn't need a copy. I was sitting in the room next to the Central Department for Contracts.

Q. Were you informed of all contracts that came into the Department?

A. Yes, as a rule, they passed me but I didn't read all of them.

Q. Do you mean they came across your desk for consideration?

A. They came to my table. If they were smaller ones, they might have gone immediately to the Central Department for Contracts.

Q. Is this a fair statement? All the main contracts that I.G. Farben made between 1935 and 1945 were sent across your desk? Is that a fair statement?

A. I will say then, all contracts which came under the definition of those contracts which had to be sent to Central Department for Contracts were those where there could be any danger of collision.

Q. Did all come across your desk?

A. They would come over my desk but when I was not present, they wouldn't leave my desk until my return but sent immediately to the Central Department for Contracts, and even if they came to my desk and after if I

was present, sometimes I looked through them very quickly and never didn't even read them because they were carried on by the special members for the contract.

"Q. Is it fair to say this, whether you read them or not, you were informed on the main or principal contracts I.E. Parben made during this period of time?

"A. Yes, I shall say almost all of them. It is likely there is a contract in itself important but not bearing on the question of collision and it is possible that those contracts, some may not have come to my attention."

Now, did you make those answers to those questions?

A. You and I signed this statement and it represents essentially what I said. The contracts where there was a danger of collision were sent to the Control Office for Contracts. Some I read, some I didn't. It may well be that important contracts were not sent there.

Q Now you stated that at the TEA meetings where you attended that they almost always discussed contracts and very often discussed patents. Is that correct?

A Yes. As a rule in the TEA a certain type of contract was discussed, most licenses, contracts with respect to processes, etc. Very rarely were any other types of contracts discussed there.

Q Did this discussion in the TEA relate to contracts for specific or individual projects?

A It isn't easy for me to answer this question. Contracts usually dealt with the granting of licenses. What do you mean by individual projects?

Q Were individual contracts which were to be executed for specific projects, construction, operation or otherwise, discussed in the TEA?

A No, I don't believe so. Not as a rule. I remember that license contracts were discussed.

Q How about contracts for the construction of new plants or the expansion of facilities? Were they discussed in the TEA meetings?

A No.

Q Were you informed through your attendance at the TEA meetings of the so-called secret contracts?

A I don't believe that secret contracts were discussed at the TEA. I knew some of those contracts because of my special activity, but I don't believe they were discussed at the TEA.

Q Well then, were secret contracts sent across your desk by the Central Department of Contracts?

A That varied. As far as I remember, an arrangement had been made for secret contracts to be treated differently from other contracts. The Central Department rested with Mr. Buhl.

Q Would it be fair to say that you, as a Voretand member, as Chief Attorney, and as one who attended the TEA meetings, that you knew of the program for the expansion of plant facilities and the construction of new plants? Would that be a fair statement?

A I don't believe that you can state that so generally. Certainly I knew of many, but you can't put it so generally.

Q Did you know of the various undertakings by Farben to operate the plants built by the Reich authorities?

A I didn't get the first part of your question. Did I know of what?

Q The undertakings. The contractual undertakings of Farben to operate the various plants which were built by the Reich authorities?

A I knew of some. I probably didn't know of others.

Q I show you Document SI 14028 which we offer as Prosecution Exhibit 1871 which are the minutes of the Legal Committee of 18 September 1941, and I ask you whether that refreshes your recollection with respect to your knowledge of secret contracts and the contractual obligations of Farben with respect to operation of Reich built plants?

THE PRESIDENT: Counsel, in the interval of time, can you indicate the part of the document that you have reference to? It appears to be several pages.

BY MR. ANCHAM:

It's page 4 of the German.

Q Do you see that part of page 4 which says: "In connection with this, von Knieriem stated that secret contracts will be handed over to him personally, etc"?

A Yes, that was 1941 after Guhl had died.

Q Could you explain the reference in that document on page 4 which says: Contracts are not to be handed over in the usual way, but that one copy of each secret contract shall be given to you personally?

A As it is stated here that document bears the date of September, 1941.

Q What was the "usual way" of dealing with secret contracts?

A This is how it was. The general rule applied that any contract in danger of collision was to be sent to the Central Department of Contracts. That was later changed. I have suggested here that it

might be disadvantageous. Then there is some mention made of the circulars, but I don't have them. I really can't explain the document without having the necessary material available to me. I would have to see the circulars of the 13th of September 1939 and of 1941.

Q Dr. Knieriem, will you please look at Exhibit 1055 which is NI 6925 which I hand you now? NI 6925, Exhibit 1055. That is the contract between the Japanese Imperial Army and I. G. Farben and I ask you to please tell me what is the meaning of the phrase: "In order to accomplish the great tasks for the development of the New Order in the world, in which Japan and Germany are faced."?

A I cannot tell you that. This matter came about in the following way. Upon request of the German Government, Farben had to grant licenses to the Japanese with respect to their hydrogenation process. The Japanese had enough gasoline in the Dutch Indies but they couldn't export it to Japan. I concerned myself with that particular contract. I particularly dealt with the question of how the Japanese licensees could be given a license for patents which belonged to a Dutch company which, in itself, was subordinate to Standard Oil and Shell. I concerned myself with these matters. Well, I really don't have to go into details because all you asked me about was the preamble, wasn't it? This contract has been drawn up in Ludwigshafen without the preamble. Then it was to be signed in Berlin. At that time I was not in Berlin. Representatives of the Japanese and German Governments were present during the time the contract was signed. I was told that at the time the signature was given, both governments wanted the introduction of that preamble. In other words, it does not originate from I. G. Farben and, as far as I know, I. G. Farben hadn't even seen it before. It was then added to the contract. The rest of the contract remained as it was and it was subsequently signed. That is all I know.

Q. Do you recall in September 1936 you recommended to the Ministry of War and to Krauch that nickel be stock-piled and that a stand-by plant for its production be erected? Do you recall that?

A. No, I don't recall it now. I only remember one letter arising from this whole nickel affair which the Prosecution has submitted as one of their exhibits. That was a long letter about the nickel situation written by Director Brendel, and I gave the second signature to it. I read that letter in your document. Otherwise I don't remember anything at the moment.

Q. Well, I show you Exhibit 722, which is NI-4921, and ask you to please look at that and tell me whether that refreshes your recollection that you recommended to the Ministry of War and to Krauch the stock-piling of nickel and the erection of a stand-by plant for its production.

A. This is the very exposé which I have mentioned. It is a long paper headed "The Problem of the Nickel Supply." I don't know it. It contains many pages ... it is possible that I read it at the time -- even probable, because I sent it to a number of agencies together with Dr. Brendel. At the moment I can't tell you what it contains. Really, I don't know.

Q. Will you please look at the first page which has the letter of 2 September, 1936? It is a short letter and it is one page and it has your signature.

A. First of September -- yes, you are right; second of September.

Q. Now, is there a reference to the Reich Ministry of War in your letter, and does that refresh your recollection? It is your covering letter to the Vermittlungsstelle asking them to transmit it to the Reich Ministry of War.

A. I see ... yes. This is a letter sent by the I.G. signed Brendel and von Knieriem, and in the letter it is stated: "As arranged during a discussion of the 31st of August, we are sending you in eight copies the exposé entitled 'The Problem of Germany's Nickel Supply' with

the request to send the necessary copies to the Reich Ministry of War. Other copies are meant for you and for Dr. Kreuch. We ask you to give us date for a conference with the Government as soon as possible."

Q. Are you through?

A. No.

Q. I am sorry.

A. I don't remember this matter. Neither was I present during the conference of 31 August, when the matter of this expose had been arranged, nor was I present during the discussion conference which must have taken place at a later date. Dr. Brendel was probably there, and I merely signed the letter. That is all I can tell you.

Q. Do you recall being informed in August of 1937 by the Reich authorities that "in consideration of the interests of military policy a nickel plant is to be constructed by I. G.?"

Do you recall being informed as to that?

A. I don't remember it, but it is possible.

Q. I show you Exhibit 683, which is NI-9548, and I ask you to look at page 2 of that exhibit and tell me whether or not that refreshes your recollection. Do you see there a reference that Brendel was furnished with a copy of the letter of 7 September, '37, and the statement "in consideration of the interests of military policy, a nickel plant with a capacity of a minimum of 2,000 tons is to be set up, and you"-- that is, I.G. Farben -- "are requested to plan the plant?"

Does that refresh your recollection?

A. Not yet; I must look through it.

My memory is not being refreshed. A number of letters are here. One came from Mr. Fleiger. It is directed to I. G. Farben. The letterhead says "Plenipotentiary for the Four Year Plan, Office for New Materials and Synthetics." It refers to a nickel plant in central Germany. The letter went to Mr. Mueller-Conrady of the I. G. Farben, a certain Mr. Schlocht, and ascertain Director Brendel.

Q. Now, is this Mr. Brendel the same Mr. Brendel who signed the letter with you, which is Exhibit 722?

A. Yes, definitely.

Q. Now, in what year did you negotiate with Standard Oil for the purchase of twenty million dollars' worth of aviation gasoline? What year?

A. According to my recollection, I stated 1937 at the time, and I believe that to be correct. As I already stated this morning, not all of it was aviation gasoline, but only part of it. There was lubricating oil, liquid fuel, etc.

Q. Could you fix the time of that affair in relation to your conference with Colonel Thomas as, which the documents show, October, 1935? How soon after your conference with General Thomas was this affair with Standard Oil -- this transaction with Standard Oil -- of a negotiation for the purpose of aviation gasoline? Could you fix the time in relation to -- Could you say how long after it was?

A. I cannot do that and I don't think that that had anything at all to do with it.

Q. No, I am asking you to fix the time when that occurred in relation to the time, which is October, 1935, when you had your discussion with General Thomas. I am only asking you to try to fix the time of the Standard negotiations for the twenty million dollar purchase -- just the time.

A. I don't know exactly when the negotiations with Standard Oil took place. The fact that in the year 1935 a conference took place with Colonel Thomas does not assist me in the least. I don't think there is the slightest connection between those two matters, at least I don't know of one.

Q. I haven't suggested that. Would you say that it was about a year after October 1935 when you had this conference? I am only trying to fix the time.

A. You know exactly when the conference with Colonel Thomas took place because you have submitted to me this afternoon the file note on that conference. I think it was September, 1935, if I remember correctly.

Q. How long after that conference did this transaction, your negotiations with Standard Oil about the twenty million dollars' worth of gasoline, take place? Was it a year after? -- year and a half? Two years? First, was it after that Thomas conference?

A. I cannot tell you that. I really cannot tell you.

Q. Well, then is it your best recollection that it is 1937?

A. Yes, that is my recollection. That is what I stated at the time, but I can't tell you exactly. The conference with Thomas does not help me in the least because I see no connection.

Q. Would you tell me if it was after your conference with Thomas?

THE PRESIDENT: Counsel, you have answered that --

A. Well, if it was 1937, it must have been after 1935.

Q. Did you know then that you were acquiring this aviation gasoline for Goering's Luftwaffe and not for I. G. Farben?

A. I knew that this entire acquisition of oil, of which I said repeatedly this was not only gasoline but comprised many other things, which carried out upon the request and demand of the Ministry of Economics and that it was for account of the Reich. That is exactly how I described it during my interrogation which is before you.

Q. Did you at any time say that Blomberg, the War Minister, approached Farben on this matter?

A. Yes. During this interrogation which is in evidence here I have stated the facts as I knew them. At the end I made a notation saying that those things were long past and that I had no opportunity to refresh my memory. I stated that many a statement may be somewhat incorrect. Some time ago I re-read it and I believe that all my factual statements are correct. I have been asked about an abundance of opinions

and assumptions and there some of them will be incorrect and at least
inexact. It is my exact recollection that Mr. Krauch told us that
we had to do this upon Schecht's request. It may be that he also
mentioned the name of Blomberg. I said that it was possible during the
interrogation, but I can't quite recollect it. However, I am quite sure
that Schecht was mentioned.

Q Now did Dr. Schmitz tell you at the time of his conference with Goering in May, 1936, where he attended the meeting of the experts for raw materials, about Goering's discussing gasoline and oil, and where Goering said, "With a thorough mobilization of the Army and Navy, the whole problem of conducting the war depends on this; all preparations must be made for the 'A case' so that the supply of the wartime army is safeguarded." Did Schmitz tell you of the conversation with Goering in May, 1936 at the time?

A No, not one word. I did not even know that Schmitz was in that Committee.

Q Now it is a fact, is it not, that Dr. Schmitz accompanied you and Dr. Krauch to London to negotiate with Standard with respect to the purchase of this aviation gasoline; is that a fact?

A Yes, certainly, that is stated in the exhibit of the Prosecution, the exact description of the journey with Krauch, Schmitz, Fischer and I. To repeat it once more, not only aviation gas was involved, but many other matters.

Q Now you testified that you did not know of Schnitzler's report on Goering's speech in December, 1936, wherein Goering stated, "We are already on the threshold of mobilization and we are already at war. All that is lacking is the actual shooting". Now you heard Dr. Kuepper testify that Goering's remarks were a by-word in Germany; did you know that at that time?

A No, I have stated that Schnitzler did not report anything about that, with reference to any report and that according to my best recollection I did not know or remember the speech. I added that if it was in the German newspapers probably I read it.

Q Did you know at that time that Goering had ordered that "beginning with January 1, 1937, all factories for the production of aircraft shall be run as if mobilization had been ordered"; did you know that at the time?

A Can I get the first part of your sentence again? I did not

quite get what factories you meant.

Q Aircraft production factories, or factories for the production of aircraft. Did you know that Goering had ordered that "beginning with January 1, 1937, all factories for aircraft production shall run as if mobilization had been ordered"?

A No, I don't remember that.

Q Now in 1937, you also undertook, did you not, to negotiate with Standard Oil on behalf of the German authorities for their participation in setting up the hydrogenation plant at Poeslitz; is that right?

A Poeslitz?

Q Poeslitz. Do you recall in 1937 you negotiated with Standard Oil as for that?

A Yes. I didn't conclude anything for the government; there weren't any negotiations for the government. So far as I remember the matter was different. The German subsidiary companies of Standard Oil and Shell, brought up the question, and, so far as I know, they did not mind doing that because they had marks in Germany which they could not transfer to England or America. On the other hand, the Government wanted some more hydrogenation plants. I received reports of that, and then I had discussions with Standard and Shell in London.

Then the project was the installation of a hydrogenation plant at Poeslitz in which both oil companies were to have one-third each and where Farben would participate in the last third.

It was our wish that this installation be registered as working for imported crude oil.

Q Now was that a regular business transaction of Farben, the negotiations with Standard and Dutch Shell to join in a corporation to set up the hydrogenation plant at Poeslitz?

A Did I understand you correctly; you were asking whether that was a regular business transaction?

Q Yes, that is the question.

A Yes, it was, absolutely. We granted the license, our

process was used. We received royalties and we took over a third.

Q Do I understand you to say that you did not act on behalf, or in the interests of the German authorities in the matter?

A Not in the name of the German authorities.

Q In the interests of or for the benefit of the German authorities?

A That depends upon whether you consider the construction of the hydrogenation plant as being for the benefit of the German government.

Q Now from 1932 to 1945 you were a member of the Board of the Ammoniakwerke Merseburg; is that correct?

A I was business manager.

Q And was that a 100 per cent owned subsidiary of I.G. Farben?

A Yes.

Q Now Ammoniakwerke Merseburg owned 50 per cent of the stock in the Ethyl, G.m.b.H.; is that right?

A Maybe it is.

Q Do you recall that in July of 1938 Ethyl G.m.b.H. arranged to borrow 500 tons of tetraethyl lead from the American Ethyl Company? July, 1938.

A Would you repeat the question, please?

Q I say, do you recall that in July of 1938, Ethyl G.m.b.H. arranged to borrow 500 tons of tetraethyl lead from the American Ethyl Company?

A I read that in your exhibit, yes.

Q And do you recall that transaction?

A No.

Q Did you say you were manager of Ethyl G.m.b.H. at the time? Did you say business manager?

A No, I was nothing; I had no position with the Ethyl G.m.b.H.

Q You had a position on Ammoniakwerke Merseburg; is that right?

A Yes.

Q You were business manager there?

A Yes.

Q And you do not recall, as business manager of Ammoniswerke Mersburg anything on the ethyl lead transaction?

A You are somewhat in error about my functions as business manager of Mersburg. It absolutely equalled zero. Mersburg was kept as a Department of the I.G. Farben. It was considered just as a business department of I.G. Farben. In other words, it was subordinated to certain Vorstand members, namely, Dr. Schneider and Dr. Bosch, and Mr. Schmitz and Mr. Krauch, and many other gentlemen of the I.G. Farben were also business managers. Throughout this entire period from the year of 1932 to 1945 not one meeting had taken place, not one occasion had arisen where any other gentlemen who formally was a business manager actually exercised a function there.

Q Mr. Karsten was a lawyer at Berlin NW 7, was he not?

A Yes. In the Central Finance Department of NW 7.

Q Is it true that every lawyer appointed at NW 7 had to be personally approved by you?

A The matter was thus. The legal departments, which, after all, worked independently, often received lawyers without any knowledge. I once expressed a wish that I be informed first before new lawyers were being employed. That was done mainly for the following reasons. Many younger lawyers in Germany endeavored to receive a job with I.G. Farben. I.G. Farben received quite a lot of applications. Very often they were very good, intelligent people, but there was not enough space. One did not need so many people for the job. Such applicants were then told that there was no vacancy at the moment and they were told to take some other job which they might be able to find, and we furthermore promised that we would let them know should a vacancy arise. After having once made that arrangement it was naturally important for us to be informed and that is why I once asked NW 7 to employ no one without my being informed.

Q Could you just tell me whether or not you were informed through Kersten, Gierlicks or Henze about this tetraethyl lead trans-
lation?

A I can't remember.

Q Now, you heard Dr. Dencke testify as to some tax litigation regarding Dynamit, A.G., if I understood him correctly, that he stated that the tax court held the DAG to be wholly dependant upon I.G. Farben. Now, could you please tell me whether you were consulted in connection with that matter?

A Yes, I was informed about that.

Q Is it fair to say that you and I.G. Farben approved of the steps taken by Dynamit A.G. in connection with this tax litigation?

A I don't know what steps you are referring to. I don't know what steps the Dynamit A. G. took in connection with this tax question.

Q I show you NI-14024 which I ask that it be marked as Prosecution Exhibit 1872, Minutes of the Legal Committee in Frankfurt, 15 November 1935.

THE PRESIDENT: Are you marking it for identification?

Q For identification, if your Honor please. It's Exhibit 1872, NI-14024 and I ask you to please look at page 12, the reference to the effect that: "we shall appeal this decision." That is, the decision of the lower court. Does that refresh your recollection?

A Page 12 did you say?

Q That's correct.

A This is missing. It happens to be missing. Just page 12 happens to be missing. I also miss pages 9 and 10. I only have pages 2, 3, 8, 13 & 14.

Q One moment please and I will indicate it to you. Do you see that reference?

A I am sorry but Page 12 is still missing.

Q Will you please show it to him? Do you see the part beginning with sub-division K, "turn-over tax"? The part which reads: "According

to the instructions received from the Reich Ministry of Finance DAG and Dynamit and the subsidiary company which had been treated as being part of and dependant upon I.G. since 1 January 1927, are no longer to be recognized as such as of 1 December 1933. We shall appeal against this." Do you see that?

A Yes. This is how it was; any turn-over effected by one company to another imposes a certain amount of taxes.

Q I am sorry, Dr. von Knieriem, do you mind? I didn't ask you for the particulars of the litigation. I asked you whether Farben approved of the steps taken by DAG to appeal the decision?

A Yes.

Q Is it correct to say, Dr. von Knieriem, that in the German law any misrepresentations of fact in a tax matter would constitute a criminal offense? Is that a correct statement of the German law?

A I can't answer that question in this form. If somebody deceives the tax authorities he is, of course, punishable; but, naturally, matters can be presented and can be handled in such a way as to safeguard his interests and one can be of various opinions with respect to different matters.

Q Under German law if somebody filed a tax return claiming that they were dependant upon another company would a false filing of such a return be criminal? Would such a claim, if it was false, be subject to criminal penalties?

A That would not have been any punishable act because the question of dependency or non-dependency is always an issue for argument and you see in this case that the various levels of the courts have decided differently. In other words, the first level stated, let us say, that there was dependency. The court decided in that sense and the next level, the higher level, decided differently, interpreted the thing in a different sense. In other words, it is a very much contested question as to whether there is or is not dependency.

Q As a tax expert and a tax lawyer, Dr. von Knieriem, I ask

you, would a misrepresentation of fact by a tax payer stating that he is dependant upon another company, would such misrepresentations subject him to criminal penalty under the German law?

THE PRESIDENT: Mr. Prosecutor, I am wondering if you aren't getting pretty far afield from any issue of fact that's involved in this case? I suggest to you that it is a little bit difficult to see the pertinency of your inquiry.

MR. ANCHAN: After touching the point I will leave it with this question, if your Honor please. It's pertinent and we intend to bring it out in connection with other matters but at this point I will leave it with this question.

THE PRESIDENT: Very well. You may answer, Mr. Witness.

DR. SILCHER: I object to this question.

THE WITNESS: I want to reply.

DR. SILCHER: I should like to object to this question.

THE WITNESS: I would like to reply.

THE PRESIDENT: The objection is overruled. The witness has asked the privilege of answering and he may answer.

A It depends upon the following; if a tax payer misrepresents facts he, of course, is punishable. If, however, he is giving a judgment, for instance, he says he is dependant upon this company and if he is in error in making that judgment he does not become punishable. He only becomes punishable if he misrepresents facts.

Q Now, you testified, Dr. von Kriarlam, that according to the records of the Legal Committee of March 1939 discussions relating to the steps to be taken to conceal Farben's assets abroad so as to protect it in the event of war was prompted by the problems which arose out of the gold clause litigation rather than the prospect of war. Was that correct? Did you so testify?

A I have testified that the measures taken in this Legal Committee started from the question of the gold clause and not as the Prosecution assumes from the invasion of Czechoslovakia.

Q Now then, when you referred to the gold clause problem to you mean the action of the United States Government and the decision of the United States Supreme Court with respect thereto? Is that the beginning of the gold clause problem?

A One really cannot say that, because it was only important for us since the practical case with which we dealt consisted of an American company. In the same way with nations that devaluated their currency and as far as I know some of them even rescinded the gold clause but we started out from the following point; an American company had issued a dollar credit with the gold clause and the I.G. Farben assumed the obligation to pay their own debts. When the dollar was devaluated in the United States and the gold clause rescinded a condition arose which I described to you yesterday.

Q Now, that was in 1935, was it not?

A Well, I don't know exactly.

Q If I tell you that the decision of the United States Supreme Court cases was in 1935, would that refresh your memory?

A How would it refresh my memory. I didn't know it and if you say so it's probably right.

Q As a matter of fact isn't it true that the problem of gold clause litigation was first seriously discussed in the Legal Committee back in 1937?

A I don't know that. I may be.

Q I show you NI-14023 which I ask be marked as Prosecution Exhibit 1873.

THE PRESIDENT: For identification?

MR. ANCHAN: For identification, and ask you whether that refreshes your recollection as to a discussion of the gold clause problem in 1937? Will you please look at page 5 and 6?

THE PRESIDENT: Before you go into that matter perhaps it would be an appropriate time to suspend for the day. The Tribunal will recess

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until 9:30 tomorrow morning.

(A recess was taken until 0930, February 10.)

Official Transcript of Military Tribunal VI, Case VI
in the name of the United States of America, against
Karl Krauch, et al, defendants, sitting at Nurnberg,
Germany, on February 10, 1948, 0530, Justice Shabo,
presiding.

THE MARSHAL: Persons in the Courtroom will please find their
seats.

The Honorable, the Judges of Military Tribunal VI, Military
Tribunal VI is now in session. God save the United States of America
and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: Mr. Marshal, will you ascertain if all of the
defendants are in the Courtroom?

THE MARSHAL: May it please Your Honors, all of the defendants
are present in the Courtroom with the exception of Krauch, Hoefliger,
Schneider, Schmitz and Lautenschlager.

THE PRESIDENT: The defendants enumerated have been excused on
their application from attendance today.

MR. SPEECHER: If it please the Tribunal, yesterday Mr. Lechen
marked for identification, six documents. We intend to offer all except
one of those documents in evidence, copies have been sent up to your
Honors, and copies have gone to both counsels for Mr. von Knieriem. The
balance of the copies will be distributed during the course of the day,
or there are extra copies available here now.

Perhaps I could just read the NI numbers --

THE PRESIDENT: Wait until we get the exhibits and then we can put
the numbers on them. You have the numbers on the exhibits.

MR. SPEECHER: Perhaps I might just read the NI number and the
exhibit number for purposes of being certain that the record is clear.

THE PRESIDENT: Very well.

MR. SPEECHER: NI 14002, will go in evidence as Exhibit No 1868;
NI 14022, will go in evidence as Exhibit No. 1869; Exhibit 1807 will not
be offered. That was the interrogation of the defendant. Exhibit 1861

will be NI 14028, and NI 14029 will be Exhibit 1872. The last document, NI 14023 will be Exhibit 1873.

THE PRESIDENT: Thank you.

MR. SPEECHER: Thank you.

THE PRESIDENT: I should like, at this time, to hand to the Secretary, and make available for examination by counsel, a report from our Commissioner dated 9 February, 1948, which shows the examinations that have been conducted under the supervision of the Commissioner since his last report, the affidavits withdrawn by the Prosecution, the cross-examination waived by the defendants, and the witnesses still to be examined, from which it appears that there are 8.

The Commissioner has concluded his report with this observation:

"No further action by the Commissioner can now be undertaken until a determination is reached as to the availability of the remaining witnesses for examination at Nurnberg or elsewhere."

That is to say, the Commissioner for the time being at least, is unable to function with respect to the 8 remaining witnesses. We shall be glad to be advised by the Prosecution as soon as you have surveyed the situation as to the possibility of conducting actual cross-examinations of those witnesses at Nurnberg, or elsewhere, as the case may be.

As I said before, I shall hand the copy of the original of this memorandum to the Secretary where it will be available for the use of any of you who wish to recheck the names of the witnesses involved.

MR. SPEECHER: Mr. President, how would you like to have us make the report you suggested?

THE PRESIDENT: It probably would save time if you can give the Chair a memorandum, or if it's only a partial report as to one or a part of the witnesses, you can do it in open Court at your convenience.

MR. SPEECHER: Since there are so few, and I have them generally fairly well in mind, I think I can give a brief report on some of them right now.

THE PRESIDENT: It would be helpful, and I would be very glad to hear you.

MR. SPEECHER: Now with Zlotow, he is in the United States and cannot be brought here.

Lotzmann, is a German who is in Poland either under trial or has been tried. I believe with respect to his activities in the occupied eastern territory. He cannot be brought here. We have a representative who has gone to France and Belgium personally, among other things to attempt to see that Mol from Belgium and Balandier from Paris, France, can be encouraged to come here, although both have stated that economically and for personal reasons they do not want to come.

For the moment, we cannot find Bendel in Paris, but we are checking again with the organizations there.

Kohn is near Berlin and could be interrogated there by Defense Counsel who could then submit a counter affidavit by him. He is available there for cross-interrogatories but he may not be brought to Nurnberg. That was our last report.

I have no information on Steinschak that is recent.

With respect to Treister, who is in Prague, we believe if we send one of our own men we will be able to bring him here.

THE PRESIDENT: Very well. Now with reference to the witness Kohn that the Prosecution just mentioned, the Tribunal would suggest that counsel for the Defense give consideration to dispatching some member of your staff to Berlin to obtain cross-affidavits from him, if that would serve your purpose, and I may say to you that the Tribunal will give you such support with reference to orders and clearances as it can provide in order to expedite that matter if you should conclude to use that means of dealing with the problem.

We will ask the Prosecution from time to time to supplement this report so that we can look forward to the time when we can wind up what is to be done with respect to these 8 remaining witnesses.

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Are there any other announcements before we resume the trial? If not, the Prosecution may proceed with the cross-examination of the defendant von Knieriem.

CROSS EXAMINATION

DR. AUGUST VON KNIERIEM

BY MR. ALCHAN:

Q Dr. von Knieriem, do you have before you, Exhibit 1873,
NI-14023?

A No.

DR. FELCKMAN: Your Honor, I should like to ask, your Honor,
that the defendant be submitted, the exhibit which has yesterday been
offered for the purposes of identification and today as a proper exhibit.
It will be necessary for him to have for the re-examination. Unfortunately,
we only have one copy each for Defense counsel.

MR. SHRECHER: I will immediately see that another copy is brought
in which Dr. von Knieriem can have before the re-direct examination.

THE PRESIDENT: Very well.

MR. ALCHAN: I call your attention, Dr. von Knieriem, to page 5,
item 2, which begins, "Gold Clause Lawsuit", and at the end of page 8,
"The conclusion reached after a careful examination by the Patent
Department in Ludwigshafen was that it would not be advisable to make
such a transfer as it would bring more risks and disadvantages with it
than advantages. Apart from other reasons, a transfer of this kind
undertaken on its own won't be of any great value, and so forth."

Now does that refresh your recollection that in December, 1937,
the Gold Clause problem was discussed as a basis for the transfer of
assets abroad?

A Yes, from this statement it becomes apparent that on the 20th of
September, 1937, we talked about the Gold Clause in the Legal Committee.

Q And did you also talk about the Gold Clause as being one of the
factors upon which you considered the problem of camouflaging your assets
abroad?

A Yes, that seems to be so.

Q Is it true, Dr. von Knieriem, that at the first meeting of the

Legal Committee, after the Munich crisis, namely at the meeting of 16 November, 1938, you stated, and I quote: "A refusal to recognize abroad the German currency legislation, makes it once more important for I.G. to look into the problem of safeguarding itself against attacks abroad. After the discussion and the last meeting of the Legal Committee, practically nothing has been done in this respect until the September suddenly made precautions imperative. In order to eliminate the danger of war sequestration in case of an outbreak of hostilities, the Dye Industry, etc."

Now I ask you, the reference to the September crisis, does that refer to the Munich crisis of September, 1938?

A You have read something before, and I am not quite sure where you read from. Did you read from the report on the meeting of the 20th of December, 1937, or of the meeting of the 17th of March, 1939? I cannot quite find the passage.

Q I was reading from Prosecution's Exhibit 1872, which is NI-14-24, the meeting of the Legal Committee of 16 November, 1938. Do you have that before you? Prosecution's Exhibit 1872, NI 14024.

A No.

Q Do you see that reference to the September crisis, on page 4 of the original?

A Would you just let me read it, please.

Q My question, Dr. von Knieriem is whether the reference to the September crisis in the minutes of that document, refer to the Munich crisis of September, 1938?

A I am just looking for the passage.

Q Page 4 of the German, bottom of page 4.

A I find nothing about any crisis. On page 4 there is some mention made concerning the simplification of the concern, but no mention is made of any crisis.

Q It is page 4 of the original, and the paragraph begins: "This,--"

THE PRESIDENT: Can't you send someone to the witness box and point out the passage without getting it on the record, - the part of the document that you are concerned with, and save time?

MR. ANCHAN: I think he has it now.

THE WITNESS: I have found it now.

The meeting took place on the 15th of November, 1938, and on the page which you have pointed out it is being stated after the discussions, during the last meeting of the Legal Committee, that nothing has happened practically in that respect until the September crisis made sudden measures necessary. Well, that is September, 1938.

Q September, 1938?

A Yes, that was the Munich agreement, and I think that was meant; personally I no longer recall that meeting.

Q Is it a fact Dr. von Krieger that the minutes of the Legal Committee were sent to Drs. Krauch and Schmitz?

A The records of the Legal Committee meetings were always sent to Dr. Krauch and Dr. Schmitz.

Q Now you have introduced as your Exhibit 19, excerpts from the minutes of the Legal Committee of 17 March, 1939. Now did I correctly understand your testimony to be that from this excerpt it can be shown that the lawsuits in connection with the Gold Clause, was the cause of the entire problem of the protection of I.G. assets abroad; is that correct?

A From the minutes of this meeting it becomes apparent that a discussion was held about safeguarding of assets abroad; that the point of departure for this discussion in the legal committee, or better, the referent, the Department of Dr. Kersten, were the so-called Gold Clause proceedings, and furthermore, that certain measures, in order to safeguard in the case of war, were being contemplated.

Q Now I show you Exhibit 1020, NI 2796. This is the letter of Dr. Kuemper of June, 1939, transmitting a summary of the minutes of the Legal Committee of 17 March, 1939. Now I ask you to please look at that

document, and I call your attention to page 2, the paragraph right after the enumerations, A,B,C and D, the paragraph beginning: "The protection of these assets against sequestration in the event of war calls for such more far-reaching measures than does protection against Writs of Attachment or execution". Now I ask you, Dr. von Knieriem, could you point to anything in that document before you, and the transmittal of the summary by Dr. Kuopper to the Commercial members of the Vorstand, which suggests or indicates in any way that the Gold Clause was a factor upon which the steps for the transfer of assets were to be taken?

A During my direct examination I have already explained that questions of covering up and camouflaging, were handled by the individual legal departments. On the 17th of March, 1939, it was discussed during the Legal Committee meeting, the minutes of which are before us, and it was handled in the same way as I described it to you before.

Q I am sorry --

A I am coming back to your question. Let me first explain what I have to.

after this meeting of the Legal Committee on 8 June 1939 Mr. Kuypers as the Chairman of the Legal Committee Dyostuff wrote that very letter which you have just shown me; that was the letter dated 8 June 1939. This letter is being sent to a large number of persons all of whom are active in the Dyostuff field. When Mr. Kuypers was examined he was asked whether that letter was also sent to me.

Q. Excuse me, Dr. von Fodorian, the question was directed to the document before you and the question is could you point to anything in that document which indicates that the gold clause was a factor reported to the commercial boards of the Versteck in that document?

A. No, it may be that Kuypers did not consider the gold clause at all but if you want me to answer I shall have to read the document. Something in this document may perhaps clarify the situation. It starts: "The problem of safe-guarding I.G.'s assets abroad comprises as Herston continued to state, two complexes of questions, to-wit, one,—

Q. I don't think it will be necessary to read the document.

A. "The safe-guarding against measures of expropriation, that points to the gold clause, secondly, the safe-guarding of war confiscation." Point 1, points to the gold clause and that was your question.

Q. Could you read the point that points to the gold clause?

A. I have already read it. There's no mention made of the gold clause itself. The following is stated: "The problem of the safe-guarding of I.G.'s assets abroad comprises, as Herston continues to state, two complexes, two spheres of questions, to-wit. one, the safe-guarding against measures of expropriation, two, safe-guarding against war confiscation." What I just mentioned under Point 1 points to it's gold clause even though the word itself is not mentioned.

Q. Now, Dr. von Fodorian, do you know that Farber's assets abroad were made available to the German Government?

DR. FODORIAN: May I just point out something which is important in order to understand the matter?

Von Knierim read from the document and I quote: "Protection against measures of sequestration" and from what I heard it was translated by sequestration. May I say for the purposes of explanation since we are concerned with a legal wording, I think it has to be explained. The so-called Zwangsvollstreckungsmaßnahmen "compulsory measures" or measures which are being adopted by any debtor on the basis of any judgment made. It is something different from sequestration and often arises in case of war in the case of measures by the Alien Property Custodian, referring to enemy property. If this word "Zwangsvollstreckungsmaßnahmen" is translated differently we will see what Dr. von Knierim intends to state in his testimony, namely, that we are here concerned with matters of the gold abuse. It is merely a question of translation. I don't want to define my attitude towards what the witness said.

Q. Dr. von Knierim, did you know that Farben assets abroad were made available to the agencies of the German Government abroad?

A. German authorities abroad? Is that what you mean?

Q. That's correct.

A. German Government authorities. Well, only Embassies and Legations could be named. Is that what you mean? There were no other German Governmental authorities abroad or at least I don't know of any.

Q. Do you know whether Farben assets abroad were made available to German Embassies abroad or Legations?

A. No, none whatsoever.

Q. Do you know whether it was made available to any of the German or Nazi Party organizations abroad?

A. No, I don't recall anything of that nature at all.

Q. Now, did I correctly understand you to say in your direct examination that Farben participated in secret re-armament and that you saw nothing unusual in that because Farben had to obey the instructions of the authorities? Did you say that?

A. No, I did not. I said that a state which re-armed naturally has

to keep secret its measures for re-armament. I said that regulations existed for purposes of maintaining that secrecy and that I.G. Farben had to adhere to that.

Q. Did you, as an official of I.G. Farben, know that the German State was secretly re-arming?

A. Every honest being in Germany knew that the Germanization was re-arming. That became obvious from the introduction of general conscription.

Q. And I.G. Farben participated in that re-armament right through 1 September 1939?

A. It's difficult for me to make any statements about that because it is so much out of my sphere of activities. Much will be testified about these matters in great detail by other defendants. Undoubtedly, in many fields I.G. Farben in the course of the activity and in the course of the economic independence-drive, produced goods which became essential during the war.

Q. Did I correctly understand you to say that Farben participated in mobilization plans and that you say nothing unusual about that because re-arming required mobilization plans?

A. No, I didn't intent to say it that way. I said the following: for purposes of re-armament of a country one needs a mobilization plan set up by the state. This is particularly applies to a country situated in Central Europe. It is within unusual and such mobilization plans were experienced by the German state even before the First World War and every year. I further added that every single German is quite accustomed to these measures because every German, even before the First World War received his personal order for conscription and then I explained that in somewhat greater detail.

Q. Now, you have submitted, Dr. von Weizsaecker, as your Document 17 a copy of a speech by Prof. Keelan, the Vice-President of Standard Oil, made in December 1943. Now, when did you first learn of that speech?

A. If you are specifically interested in the date I would have to look

up some notes.

Q. Approximately?

A. I will tell you as approximately as I can. I believe it was in the spring of 1944. I learned about it in the same manner which I described during my direct examination. Do you want me to repeat it?

Q. Did Gustafsch tell you where he got a copy of the speech?

A. No.

Q. Now, you explained at length on your direct examination the reason for the elaborate reply which you prepared. That's Exhibit 994, VI-10551 in which you wanted Gustafsch to refute Dr. Fessler's address. Now, did I understand you to say that that document, Exhibit 994, was "window-dressing" on the part of Farbon?

A. First of all, I didn't try to refute Fessler's speech during my direct examination. Secondly, that this development at the I.G. Farbon and I am referring to Exhibit 994, was done internally within I.G. Farbon. It had been prepared by a number of technical experts. I think that the introduction originated from myself and I sent it to a number of persons within I.G. Farbon.

THE SILENCE: One remark with respect to the translation. Von Emlerian spoke about this paper which was translated "Development". It was actually a memorandum to which he referred.

A. As far as I can remember this memorandum which is represented by Exhibit 994 was sent by me to a number of gentlemen within I.G. Farbon and I believe that in this letter which is not before me, I added that the individual gentlemen should express any wishes which they might have. Furthermore, I stated that the memorandum involved, as far as I know, remained a purely internal matter and was not used for outside presentation because we were afraid of proceedings for high-treason.

Q. Is it my understanding that that document is true or false?

A. What matters -- what document are you referring to?

Q. Exhibit 994. Do you have that before you?

A. No. This document was sent to a number of gentlemen together with

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an introduction and the following is being stated and that is important
for your question. "Dear Sirs: As an attachment I am sending to you an
approved an submission of attitude towards the above article and ask you,
as far as you did not deal with that matter before, for a report or any
criticism you may have to offer." This shows that this letter constituted
nothing final. I cannot tell you how this matter proceeded. I don't know
whether any criticisms were uttered. I do know, however, that from the
technical side a number of statements were made and the paper was objected
to. I cannot give you fully and about this matter myself because as you
will readily understand the paper does not originate from me.

Q. Now, you have offered as Exhibit 17 a book written by Mr. Howard of Standard Oil in 1947. Do you know whether in the trial in the United States involving the transfer of Persian patents to Standard of which I understand you testified, that that trial dealt with parts of the subject matter covered by this book?

A. Yes, partly. In that book Mr. Howard it is being described in great detail how the negotiations between Standard and Standard Oil were going on which lead to the so-called "Frank Howard" which was introduced here as the Prosecution. This Frank Howard was used at the time for purposes of the Civil, American Government vs. Standard Oil and it was introduced through me as a witness.

Q. Did you know that Mr. Howard was a witness in that case?

A. Yes, I know that. I knew it because he was interrogated after me at one time and I was permitted to remain in the room and listen to his testimony.

Q. Did you know or do you know that the Circuit Court of Appeals for the 2nd Circuit in its decision of 22 September 1947 stated "on the witness stand Howard, testifying on the same conference was in the opinion of the Court not a credible witness." Did you know that?

A. No, I didn't know that for about 10 days now I have received the fourth printed volume containing the records of this trial but unfortunately I have had no time to read them through.

Q. Do you recall that in June 1940 you were invited to the meeting of the Commercial Committee where the proposed new order was discussed?

A. Yes, I believe the Prosecution submitted that as an exhibit.

Q. And you were present, were you not, at the meetings of the Commercial Committee when the purpose of the new order was discussed; is that right?

A. I believe that I was present during the meetings to which the invitation referred to which you submitted as an exhibit.

Q Do you recall whether you were present at subsequent meetings at which the New Order preparation was discussed? November, 1940, for instance?

A I don't remember that, but I know that I was present when a report was made during the Vorstand meeting.

Q Did you know that Ter Meer stated that your proposal for a concentration of patent clearances through a central German agency was considered by the Vorstand members as the most important contribution of the proposed New Order? Did you know that?

A No. I think I remember that Ter Meer afterwards told me that he thought that this work of mine was particularly interesting and valuable.

Q Is it not true that a meeting of the Commercial Committee in November, 1940 you specifically requested that action be taken with respect to your recommendations on the new patent system for the New Order?

A I don't remember that now.

Q I show you Prosecution Exhibit 1622 which is HX 9280 and I ask you to please look at page 5 where it refers to the meeting of 12 November 1940, in the item dealing with France and Belgium. Under the item, 37th Meeting on 12 November 1940, you are present. Under the item "France and Belgium", and do you see there the statement: "Dr. von Knieriem asks that consideration be given to the wishes expressed with regard to the protection of patents?" Does that refresh your recollection?

A It says there: "Dr. von Knieriem asks to take into consideration the wishes for the patent protection". This doesn't refresh my memory, but if that is what it says it's probably true.

Q Now, after September 1939 and through the end of the war in 1945 were you ever consulted by Farben officials about the application of the Hague Convention with respect to the activities of the German Government and Farben's relation to it?

A. Within my own field of work there arose once or twice questions which were connected with the Hague Warfare Convention, but what were you asking about, the Geneva Convention or Hague Rules of Land Warfare?

Q. The Hague Convention dealing with confiscations and taking of property of occupied countries?

A. These are the Hague Rules of Land Warfare. Once or twice questions came up which concerned my own field of work. That is all I remember.

Q. I show you Document D 11027 which I offer as Prosecution Exhibit 1874 and I call your attention to page 9, Item 3.

A. That is connected with what I just said.

Q. I haven't finished the question, please.

Item 3 dealing with legal status and legal order of the occupied countries, particularly the acquisition of control over Dutch companies. Now, does that refresh your recollection that there was a discussion in the Legal Committee as to the application of the international rules to that subject.

A. It wasn't translated properly. It says here: "With the legal position and the legal regulations in the occupied territories and in particular the influence on companies by Dutch law." I remember that rather very exactly. This is in connection with the point which I mentioned previously. I said that I myself had to deal with this question concerning the Hague Rules of Land Warfare. Afterwards, with respect to these questions, a report was made before the Legal Committee.

Q. Now, I show you DE 6454 which we offer as Prosecution Exhibit 1875.

THE PRESIDENT: On your statement, you are offering that in evidence at this time?

MR. ACHER: That's correct. Sufficient copies are being handed out.

THE PRESIDENT: What about the preceding document?

MR. AMERIN: In evidence. 1874, we are also offering that.

THE PRESIDENT: Then, Prosecution Documents marked 1874 and 1875 are introduced in evidence.

BY MR. AMERIN:

Q Now, will you please look at the second paragraph on the first page of that document, Exhibit 1875? Beginning with: "In the present examination, however, the legal organization of the occupied territories is not only to be considered from the angle of German home policy, but a study is also to be made of the international effects of the legal organization set up by Germany in the occupied territories. That is to say, investigations will be made into how far the measures taken by the German military and administrative authorities in the occupied territories have any prospect of being recognized by other states as legally sufficient."

Do you see that?

A I don't find it, but I know what you mean. I know that.

Q Now, I call your attention to page 4 of the document under the heading "Survey of the Status of the Territories Occupied by Germany", under 1: "The incorporated territories, those territories which have been incorporated definitely into the German Reich, can no longer be included in the aforementioned examination since they are no longer occupied territories as the term is used in law. It goes without saying that the incorporation of these territories under the law of nation annexation and all steps referring thereto will not be recognized for some time to come by part of the non-German world. That is to say, they will not be considered as having legal effect."

Do you see that?

A Yes, I have it.

Q Do you also see immediately following that, under Incorporated Territories, they refer to the incorporated Eastern territories?

A Yes, I find it here.

Q Now, you know, did you not, that Farben sought and acquired Polish plants and machinery from the Reich Government?

A During my direct examination I have already stated that, according to my best recollection, at the moment, I only know about the Polish matter that in the Vorstand, a short report was made about Boruta and I don't remember that any acquisition was discussed. All I remember is a mention of lease. Furthermore, I stated that the names Gola and Wismica, as far as I remember, were not mentioned.

Q Now, you stated in your direct testimony that as to Russia you participated in the negotiations on the drawing of charters of Chernia Ost, G.M.B.H. and Synthesia Kunststoffs, G.M.B.H. Is that correct?

A Yes, I explained that in greater detail. I have explained what I had to do with that matter. I said that the charter was sent to me by Chernia Ost, G.M.B.H., and that certain contractual matters were dealt with at the Amtspolizei Legal Department and that I sent a letter in that connection. I explained it all in great detail during the direct examination and it is unnecessary to repeat it.

Q Did you know then that the purpose for creating these companies was to exploit the Russian chemical and rubber factories?

A No. I know and I do not particularly referring to Chernia Ost that, as the witness Schlotterer has testified here, chemical plants in occupied Russia had to be cared for. In other words, he had to assist in their operation.

Q Now, as to Norway, isn't it a fact that you negotiated and concluded the initial agreement between I. G. Farben, Norsk-Hydro and the Bank for German Aviation?

A Bank for German Aviation? Is that what you're referring to? No, I don't remember that. The Norwegian negotiations were not carried on through me and I don't remember having participated in them. I have no recollection whatsoever and I don't believe so.

Q Did you conclude any contract with respect to Norsk-Hydro, I.G. and the Bank for German Aviation?

A I don't remember. I really don't.

Q Do you recall testifying to that effect in an interrogation on 9 October 1946?

A That may be. I may have been asked about it but I don't remember having signed a contract. I have been asked about all these things.

Q Now, as to matters that came before the Vorstand, did you, at any time, with respect to the negotiations or the acquisition of property in foreign countries ever object to the steps that were taken to acquire such property?

A Do you include when talking about acquisition such contracts as Francolor or what are you referring to?

Q I am referring to all acquisitions of property by Farben in France, Austria, Czechoslovakia, Poland and Norway.

A No. I have testified about that point at great length during the direct examination as to what I considered my job to be and where my fields of tasks lay.

Q When did you first learn that prisoner of war labor was used in Farben plants?

A That I can no longer tell you. I didn't learn it through any formal notification addressed to me, but from a certain point of time I knew that it existed.

Q Now, you stated that you were present only during part of

the TEA meetings and you did not recall having heard Dr. Struss explain the various charts which were on the walls of the TEA board room. Is that your testimony?

A. During my direct examination no mention was made of any charts, as far as I remember. During direct examination I merely stated that I was almost a regular visitor at the TEA and that I did not remember having heard any mention made there about the employment of the laborers from abroad. That was my testimony, as far as I recall it.

Q. Now, is your recollection now refreshed after having heard Dr. Struss' testimony as to the procedure at the TEA board meetings with respect to those charts on the wall and his lectures?

A. It didn't have been refreshed. I remember having seen charts occasionally in the TEA board room, charts referring to everything under the sun - production, investments, and perhaps even charts about workers.

Q. When did you last visit Switzerland?

A. In May 1940 I was at Basle where I met Howard, and then at some later date during a later year I went to Zurich, as far as I can recollect. I cannot now tell you in what year that was.

Q. Can you say whether it was after 1941?

A. I really cannot make that statement under oath. I know what it was all about but I can't give you the year. It was a very brief visit. Only one day, as far as I remember.

Q. Now, you stated that in October 1942 you visited Auschwitz, accompanied by Ter Meer and Dr. Ambros.

A. Yes.

Q. And from your inspection of the Buna Plant at Auschwitz you learned that concentration camp inmates were then employed. Is that right?

A. Yes. I said that I probably learned of it as a result of that inspection. Probably.

Q. You also stated, did you not, that although your recollection is now blurred as to what you say, you did not see anything unusual or

contrary to order and no so-called figures of misery. Is that correct?

A Yes.

Q And you stated, did you not, that you believed it meant improvement in the condition for concentration camp inmates to work in the Buna Plant as opposed to working in a concentration camp. Is that correct?

A Yes.

Q Now, what did you understand the condition of concentration camp inmates at Auschwitz to be?

A I have assumed and I am still assuming that their situation was better at the plant than if they had remained at the concentration camp. That for the simple reason because I am aware of the fact generally that at I.G. plants and throughout I.G. social conditions were particularly favorable. I had no doubt whatsoever that this would also apply to concentration camp inmates employed at an I.G. plant.

Q What did you understand the condition of the concentration camp inmates at Auschwitz to be?

A I know nothing of that and I had no definite imagination. I only had some imagination to the effect that there would be an improvement in their condition at an I.G. plant.

Q Was your imagination such that any work at an I.G. plant at Auschwitz must necessarily have been better than their condition at the Auschwitz concentration camp?

A My attitude was probably the following. If, after all, one is imprisoned it is better to work than not to work. That is an observation which I have found to hold true in my own case.

Q And did you understand that a concentration camp was only a prison - a normal prison? The Auschwitz concentration camp?

A I thought that it was a concentration camp. I don't know what conditions prevailed there and I don't believe that I imagined at the time that people were working there. I thought of it as a type of prisoner as we have it now here in our camps where one actually is

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imprisoned and doesn't work.

MR. ANCHAN: No further questions.

THE PRESIDENT: Will there be some redirect examination on behalf of defense counsel?

(Redirect examination indicated.)

I think we'll anticipate our morning recess about three minutes and rise at this time.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. FELCKMANN: If the Court, please, according to the distribution of the direct examination, we shall divide the redirect examination between my colleague, Dr. Silcher, and myself.

THE PRESIDENT: Very well.

REDIRECT EXAMINATION

BY DR. FELCKMANN:

Q Dr. Knierien, the Prosecution asked you about Vermittlungsstelle-W, and whether the creation of this agency can be traced back to your initiative; it seems to me that from the documents, and specifically from the dates of the documents you could comment on this question. For this purpose I should like to hand you from Document Book VI, Exhibit 101 --

THE PRESIDENT: Counsel, we are getting a good many series of document books. I assume, and perhaps the record should so indicate, that you have reference to Prosecution Document Book VI, is that correct?

DR. FELCKMANN: Yes.

THE PRESIDENT: Very well.

Q (continued) This is Prosecution Document Book VI, Exhibit No. 101, which I have handed to you, and at the same time I shall give you another document. I shall give you Exhibit 1868, which was offered by the Prosecution during cross-examination; and then from our document books, Document Book Knierien, will you please take Book No. II, page 89, supplement to Exhibit 9. This is Supplement No. 6, page 89. Now, will you please comment on these documents in their sequence, and tell us whether the initiative for the establishment of Vermittlungsstelle-W came from you?

A The first thing seems to me to be Exhibit 101. This is a letter of September 5, 1935, signed by Mr. Krauch, and then it is addressed to a large number of IT offices. This letter begins: "The

Central Committee has decided to create a Vermittlungsstelle-W,"
This, as I said, was on the 5 September 1935. It was not until 1938
that I entered the Central Committee, and when I was a member it no
longer made such resolutions. The first step was taken on September
5, 1935.

Q The next document.

A Then I believe the next exhibit numerically is Exhibit 1868.
This is the exhibit which the Prosecution has just introduced. It is
the record of a conference with Colonel Thomas.

Q What is the date of the record and what was the date of the
conference?

A The conference, -- Krauch took me along, -- Krauch and I
went together. The conference was on the 17 September 1935. The re-
cord was made on 4 October 1935. Now, I believe comes the third. The
third is in my document book, Supplement No. 6, of exhibit -- which
exhibit is it?

Q Exhibit No. 9, Mr. Knieriem.

A Yes, Exhibit No. 9, Supplement No. 6. That is a letter
written by me on the 18 October 1935 to the members of the Legal Com-
mittee, and the Patent Commission, a copy to Mr. Schmitz, the three
Sparta chiefs and some other officers. In this letter I deal with the
question of how we should proceed in patent and contract questions
with a view to the national defense; and in this letter I mention that
Vermittlungsstelle-W has already been created within Farben, and that
in questions of this nature it should be used.

Q Then in conclusion what do you have to say about the dates
of these letters with regard to the question that Vermittlungsstelle-W
was created on your personal initiative?

A That seems to me to be very clearly disproved by the dates
of the documents which I have just cited.

Q Mr. Knieriem, you have the exhibits just submitted by the
Prosecution which I handed to you just before this redirect examination;

will you please look at them? Do you have them? It begins with 1868. They are fastened together with a paper clip. Now, please look at Exhibit 1869.

A 1869 -- yes.

Q There is mentioned there minutes of the meeting of the Legal Committee in Frankfurt on 30 September 1935; do you recall that a photostat of this document was shown to you during cross-examination?

A Yes.

DR. PEICKMANN: I will be very grateful to the Prosecution if I might have that photostat. I have only a mimeographed copy.

Q I will try and see whether I can manage on the basis of your recollection --

THE PRESIDENT: It is in the Secretary's files? Very well. I see you have it. Very well.

Q (continued) I should like to hand you the photostat; will you please compare the photostat with the mimeograph copy? Do you notice anything?

A The Photostat contains a first paragraph which is missing in the exhibit.

Q Yes. A little mistake of Miss Ivone Schwarz who certified the copy, but I had to emphasize it. I want to ask you about this first paragraph which is not included here. Please read the first paragraph and the second paragraph?

A The first paragraph, that is the one missing, reads as follows: "Dr. von Knieriem reports about certain difficulties involved in the treatment of patents and the execution of international contracts involving the change of experience. The resulting questions will be solved for Farben by a liaison office to be created in Berlin which is to have one representative of each of the three Sparten." This paragraph refers to what questions, Mr. Knieriem?

A This paragraph refers to the questions which I discussed

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in such detail in my direct examination, the difficulty for Farben
to avoid the danger of violating provisions against treason.

Q. And now comes the second paragraph -- that is included in the mimeographed document.

A. Should I read it?

Q. Perhaps you can read it to yourself and just give us the contents? What word does the whole paragraph turn on?

A. The paragraph deals with the handling of industrial espionage cases.

Q. Does industrial espionage -- economic espionage -- have anything to do with what is discussed in the first paragraph?

A. No, nothing at all, and I believe it would be a good idea for me to explain very briefly what it does mean.

Q. Economic espionage.

A. Economic espionage. In 1923 when I came to Farben there was a very great danger that important technical secrets might be discovered by unauthorized persons in Farben and then the information might be given to other countries. Usually minor employees or foremen or such people were bribed, and then occasionally such people succumbed to temptation and turned over procedures and processes and so forth which they smuggled out of the factory.

Q. Was this type of espionage limited to other countries or was there economic espionage on the part of the competitors?

A. That is, of course, possible, but the cases of which I learned at the time mostly dealt with attempts from abroad. Now, each of the big Farben plants had some people that had nothing else to do but observe these cases and, if possible, prevent them. And in Leverkusen there was an official who had an especially good reputation for his skill in such matters. That was Mr. Karback. His name is mentioned here in the second paragraph of this document.

Q. You have already said that this discussion about economic espionage had nothing to do with the question of the creation of an office such as the Vermittlungsstelle-W. I understood you correctly, did I not?

A Yes, that is my impression.

Q Thank you. Now, I would like to hand you another document. This is Prosecution Exhibit 351 from book 35. I believe you have that. It is connected with the Orgacid Farben contract, Mr. von Knieriem. No, not the ones which I just gave you, but the ones which you had before.

A Yes, I believe I have it.

Q That is the Orgacid subject. I asked you about that in direct examination. That is Exhibit 351, NI 5681. Do you have it?

A Yes.

Q I wanted to ask you about the concluding formula of this contract. It reads "Secrecy obligations of Orgacid according to Paragraph 5, Section 1, is not affected by the contract." And in Paragraph 5, please read that. Will you please quote the first sentence?

A Yes. Paragraph 5 says that Orgacid is to keep all knowledge obtained from the Farben processes strictly secret.

Q There follow some other sentences.

A This is also true of the drawing of Farben and the apparatus delivered. I believe that will suffice.

Q Yes.

A That is paragraph 5.

Q That is sufficient. Did this secrecy have anything to do with military secrecy or are these formulations which are usually found in contracts?

A I have already said in the direct examination and in the cross-examination that I have only a very vague recollection of all this. But I can tell you one thing. Such provisions were nothing unusual in Farben contracts and the provision in paragraph 7 at the end is nothing unusual in that one says that after the contract expires certain technical knowledge still has to be kept secret.

Q Now, I want to call your attention once more to the letter of 9 August 1935, of Dr. Boeckler. 9 August 1935.

A I do not have that. Just a minute.

Q It's the same exhibit -- 5681.

A 9 August 1935. Yes.

Q This letter consists of only one sentence. Will you please read it.

A "This is to confirm that the polyglycol-M produced in the new plant of Orgacid at Amendorf will be exclusively used for production of dichlorodithylsulphide."

Q Thank you. That is sufficient. Now, can you tell me whether the expression mustard gas is used in this document?

A No, I did not see that word.

Q Thank you. Now, I should like to put to you, from Book 38 of the Prosecution, Exhibit 663. I will have to hand it to you, Mr. von Knieriem.

A I do not have it.

Q You will remember that this was already shown to you in cross-examination. It deals with nickel. I just wanted to ask you to tell us from the document whether there is any name given to connect you with this instance? You would have to look for your name.

A I can't find it.

Q I have to do that because otherwise the impression might be given that this document might have something to do with you. You don't find any signature or any mention of your name?

A No, I don't.

A Thank you.

MR. SPRECHER: We'll make that point clear. The reply that came back was addressed to Dr. Brandel and not to the defendant von Knieriem. The letter which went out was signed by Dr. von Knieriem and Dr. Brandel. That is the connection.

BY DR. PELCKMANN:

Q Mr. von Knieriem, will you please tell us once more whether, in this exhibit which I have just shown you, the letter is contained

which you allegedly wrote?

A I don't see it.

Q That is all I wanted to know. I will give you this letter in just a minute. This is Prosecution Exhibit 722, Book 39.

A Yes.

Q And it is signed by --

A By Brandel and by me.

Q I shall not go back to your explanation which you gave on cross-examination, but I believe you forgot something very important. Will you please tell us what the dictation sign is.

A Brendel -- "B".

Q Now, as to rearmament. You were examined about that. You were asked whether you had knowledge of rearmament. I wanted to ask you whether, in this rearmament of which you had knowledge, the idea of an imminent war of aggression must necessarily have occurred to you or whether rearmament was a factor even without war, or what your impression was.

A I certainly did not think of any war of aggression. I said that in the direct examination already. We thought that a country could not be without protection. I mentioned the invasion of the Ruhr. Certain things which might be called a sort of rearmament would be important even if there were to be no war at all.

Q That is what I was about to ask you, Mr. von Knieriem. Could one perhaps assume, the prosecution might say, that you had to know that to exert pressure on other countries this rearmament was a suitable instrument? What would you say about that?

A I never had any such idea. If I had thought about it I would probably have had the opposite impression -- that a country without protection is in danger of being exposed to such pressure from others. In all these questions -- and this is what I meant to say before -- it is important to consider that Germany remembered very well the sanctions against Italy. When countries like Germany and Italy do not have important raw materials and so forth, they are always in danger, when there is some international difference of opinion, of being penalized by economic sanctions and of being blocked off from things that they need.

Q Now, to the so called plundering. You were asked about the cases in Russia. You have already said that you had something to do with the charter of Chemis Ost and the contract with Synthesee Kautschuk. In conclusion you were asked whether you did not object to such acquisitions of Farben in Russia, and also --

MR. SPEECHER: Sorry, that is the one exception we did make. He

wasn't asked a question about acquisitions in Russia. He was asked about acquisitions in other places, so we must object to false assumption of the question.

DR. FELCKMAN: I am glad to correct myself and make it a general question whether you did not object generally to such practice on the part of Farben. And I believe you must tell us once more what you know about these incidents and what you thought the intentions of Farben were.

MR. SPEICHER: We merely asked the witness if he objected. It doesn't help on re-direct to ask for a repetition of what the witness further said on direct -- a point which was not asked about on cross-examination.

THE PRESIDENT: Well, the purpose of re-direct should not be to have the witness reiterate what he has already said and in the form which the question stands it is objectionable because the only point to the question is to ask him to repeat what he already said. That is in the record and is before the Tribunal. Now, if counsel wishes him to amplify or explain some answer that he may have made, that would be proper. But the objection made by the prosecution must be sustained because it's only calculated to have the witness reiterate and repeat what he has already testified about.

BY DR. FELCKMAN:

Q Why did you not object?

A Because I didn't see anything that was wrong and I did not investigate because contracts and so forth which were presented in the Verstand and which were not in my own field of work I never examined because we had a system of decentralization in the legal system of Farben.

Q The charts in the TBA were mentioned. You said that you saw them. Did you study these charts?

A No, certainly not. They had nothing to do with my field of work and I don't recall examining them closely.

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Q The charts in the TGA were mentioned. You said that you saw them. Did you study these charts?

A No, certainly not. They had nothing to do with my field of work and I don't recall examining them closely.

Q These charts are supposed to have contained figures at various times as to the state or the number of employees -- German workers, foreign workers, and so forth. Could you have seen from these figures whether the foreign workers came to Germany voluntarily or not?

A Since I did not examine them carefully, as I said, I can not answer this question. I do not assume that this was recorded in charts.

Q You were asked what you know about the situation of concentration camp inmates in concentration camps. It seems to me that your answer was not complete enough. What did you know about the position of concentration camp inmates at the time?

A I had only a very general idea. It was that there was a strict discipline and hard living conditions. In view of this circumstance it seemed to me that it was an improvement for the inmates to work for Farben.

Q The prosecutor has just emphasized whether you could hold this opinion as to whether the nature of the work with Farben was. He asked, did you believe that every type of work which was done for Farben was better than staying in the concentration camp.

A I am convinced that there was no sort of work in Farben that amounted to exploitation and I believe that there was no work that was especially hard. I am convinced that many types of work that are rather difficult physically were taken care of in Farben by mechanization.

Q Thank you.

BY DR. SILCHES:

Q Mr. von Knieriem, you were asked about Poolitz in the cross-examination. You spoke about the raw material bases on which Poolitz was to work. That was not completely translated. Would you please tell us whether it was German or imported crude oil?

A We were thinking of imported crude oil at the time.

Q Was that shown by the site chosen for the plant?

A Yes, the plant was situated near Oder -- near the sea. Wait a minute. It was near Stettin near the sea on the Oder.

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Q And to make it quite clear what was the idea -- what was the point of this position near the sea at the mouth of the Oder? What connection did that have with imported crude oil?

A This site was chosen in order to have sea transport. It was very unfavorable from the military point of view.

Q. Then you were asked about the fact that you were manager of the Ammoniakwerk Merseburg G.m.b.H. Did the Ammoniakwerk Merseburg have an Aufsichtsrat?

A. No.

Q. In a G.m.b.H. -- a limited company -- in general, and in the Ammoniakwerk in particular, can the managers be compared with the Vorstand in a joint stock company?

A. Merseburg had played a very special role. It was not managed like an independent company. It was more like a branch. The managers at Merseburg were not important. The Vorstand member of Farben concerned, the person who had jurisdiction over Merseburg, did its business.

Q. Did the Ammoniakwerk G.m.b.H. deal only with things directly connected with the Leuna plant and its production, where it got its name? Or did it also deal with other matters?

A. No, it dealt only with questions of directing the plant. All of Merseburg functioned like an I.G. Farben plant which was not incorporated into a special company.

Q. Did the Ammoniakwerk Merseburg G.m.b.H. have anything to do with participations of the Farben concern generally?

A. Any holdings of Farben were transferred to Merseburg so that formerly Merseburg held them.

Q. Do you recall what one of the essential reasons was for such a transfer of holdings to Merseburg?

A. The reasons are very obvious. For example, if a company would need two partners, and if Farben set up a new G.m.b.H., sometimes Merseburg was taken as a partner. And there were probably other reasons too.

Q. Now, I want to ask more directly: Was Farben as a joint stock company obligated to report its holding in its annual reports?

A. Yes.

Q. Did the Ammoniakwerk Merseburg G.m.b.H. have the same obli-

tations?

A. No; because Hoesburg was a G.m.b.H. and not an Aktiengesellschaft.

Q. Were holdings transferred to Hoesburg which had nothing to do with the production of the Leuna plant?

A. Yes, that happened.

Q. With respect to the function of Farben men in Hoesburg, was there a similar, or the same, division into departments as in Farben?

A. I don't understand your question.

Q. Did the Ammoniakwerk Hoesburg have anything to do with financial matters, for example?

A. No. I have already said this was completely a plant. It didn't have any financial questions to deal with. Ammoniakwerk Hoesburg did not handle its patents itself; that was taken care of at Ludwigshafen; and so forth.

Q. Do you know anything about financial affairs in the name of the Ammoniakwerk Hoesburg?

A. Yes, that happened. I can't think of any details at the moment.

Q. Now, I should like to go into the question of the gold clause once more. First of all, I should like to show you the record of the Legal Committee meeting of the 20th of December, 1937, which was given to you earlier. That is NI-14023. I don't know the exact exhibit number at the moment. Would you tell me, Mr. Sprecher? It is 1873, Mr. President.

And will you please read aloud the passages which I have marked there? Pages 6, 8, and 9.

A. Page 6 is marked at: "The gold clause problem has existed since the devaluation of currencies. Each country has settled it in a different way. The United States put an end to it through the joint resolution. Other countries, for example, England and Switzerland, have not done away with the gold clause in spite of devaluation. These most

interested in the problem are creditors who are prejudiced, but above all groups of international speculators..."

Then, further: "Any international loan can therefore be judged differently in different countries. Groups of international speculators can therefore systematically test all courts in the world on international loans until somewhere the existence of the gold clause is recognized."

Page 7: "But now such a group of speculators has been successful in suits: Journaling against A.S.G., and Siemens in the Trade Court in Berno."

On page 8: "As a result of this decision which favors the groups of speculators bringing the law suits, an increased activity is noticeable on the part of speculators."

On page 9: "This fact has been the cause of investigations to see whether I.G. is vulnerable at all abroad."

And now I should like to hand you a document offered by the Prosecution during cross-examination--1672--which is an excerpt from the minutes of the meeting of the Legal Committee of 15 November, 1938.

Will you please again read the passages which I have marked?

MR. SPEECH: Mr. President, no object to this form of cross-examination, giving the witness the means of reading before the Court without any particular point a number of excerpts from documents that are before the Court. That is for the briefs --

THE PRESIDENT: Well, that objection is well taken. The entire document is before the Tribunal, and at the proper time counsel may call our attention to specific parts of the document. No good purpose would be served by having the witness read excerpts in it for the purpose of emphasizing what the document contains. Now, if counsel is interested in having the witness read particular parts of the document to afford a basis for comment or testimony to be elicited from the witness, that would be proper. But not merely for the purpose of getting before the Tribunal again parts of the document that counsel thinks is important. That is arguenda-

tive and not factual because the document is already in evidence.

The objection will be sustained unless counsel for the defendant states that it is preliminary to an inquiry from the witness.

DR. SILCHER: Mr. President, that was the exact intention.

THE PRESIDENT: Then the objection is overruled, and the witness may proceed to read the parts of the document to which counsel directs his attention, with the understanding that that is preliminary to an inquiry that counsel intends to direct to the witness.

DR. SILCHER:

Q. Then will you please read the marked passages of this document?

A. Yes, they are very brief. That is: "...in the meeting of 20 December, 1937, Kersten reported on the present stand of the gold clause law suits. I.G. is interested in this because of the loan of the American I.G. which it guaranteed..."

Then it goes on: "This question of non-recognition of the gold clause legislation by other countries leaves for Farbon the problem of security against attacks abroad. This problem again becomes acute."

Q. No. Now I should like to show you a third document, NI-2796 --I have just heard that was not introduced. It was offered for identification. It was offered....

And would you please again read passages marked there? They are two very brief passages. I believe you may read it.

A. That is the circular letter of Dr. Kuemper of the 6th of June, 1939. It begins: "Attached we send you an excerpt from the record of the meeting of the Legal Committee in Berlin on the 17th of March, 1939..." And then page 2: "The problem of safeguarding Farbon holdings abroad"--Kersten went on--"involves two questions."

Q. The Exhibit number is 1020, Mr. President.

And now please look at your own document Book 4, Document 20, Exhibit 19.

A. What page is that.

Q. Page 222, at the bottom.

A. The problem of safeguarding Farben holdings abroad, "as Kersten went on to say, "involves two questions.

Q. And now, Mr. von Knieriem, I ask you whether these passages, all these passages which you have now read and by so doing refreshing your recollection, give you any occasion to change your testimony in consideration or to add anything to it, especially regarding the extent to which these things occasion you to change or to confirm the presentation of these matters in your direct examination.

Q. It was said in the direct examination that the Prosecution offered part of the minutes of the Legal Committee and edited the first part. They omitted the very part —

MR. COUNSELLOR: Mr. President, we don't believe it is true. Now, we make an objection to the remark. It has been in the index, the part which the Prosecution introduced was the part which Mr. Kuepper forwarded, and at the time when we introduced it we did not even have the first part of the excerpt; not that we make any pardon for submitting excerpts. But the amount of reliance that has been made here on this thing after we had explained it to counsel, it seems to us, deserves the comment we have just made.

THE PRESIDENT: The Tribunal are in no position to resolve controversy between counsel as to what has been or has not been established, and each party is entitled to present the facts as he understands them to be. There is nothing before the Tribunal in the way of an objection.

The witness may complete his answer. If it opens up a new field of inquiry, the Prosecution must be heard.

WITNESS: The first part was missing in the document of the Prosecution. This is given in my Document Book 4; Exhibit 1070, is only an excerpt from the minutes of the 20th of December, 1937. Otherwise,

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I have nothing special to say about it.

THE PRESIDENT: The Tribunal will rise at this time for lunch.

(The Tribunal recessed until 1330 hours, 10 February 1948.)

AFTERNOON SESSION

(The Tribunal resumed at 1330 hours, 10 Feb. 1948).

THE MARSHAL: The Tribunal is again in session.

* REDIRECT EXAMINATION (Continued).

AUGUST VON KNIRIEM, Resumed.

BY DR. SILCHER:

Q. Mr. von Kniriem, I shall now pass on to a new point. Secretary General, will you please hand the witness the Prosecution Exhibit 99A?

THE PRESIDENT: Counsel, that could not be the exhibit lying over on your table, could it?

DR. SILCHER: Mr. von Kniriem, it has been submitted to you on cross-examination. It is the internal memorandum of I.G. Farben which was intended to be responsive to the Hasele speech.

WITNESS: Yes, I remember it....

THE PRESIDENT: Why I say there has been some evidence of a relaxation of our practice here? Exhibits when not in the hands of counsel or a witness belong in the custody of the Secretary General... I just wish to observe that the practice contemplates that when exhibits are not in the hands of counsel or of a witness they should be in the custody of the Secretary General, and if you gentlemen will observe that it will save us some time hunting for documents.

Go ahead, counsel.

DR. SILCHER: Your Honor, in this case I need the photostat copy of the original document in order to submit it to the defendant. It was available here this morning, it was actually presented to Mr. von Kniriem. I assumed, therefore, that it would be also available this afternoon. Otherwise, I would have endeavored to get it before.

THE PRESIDENT: Who had it?

DR. SILCHER: The last I saw of it was that Mr. von Kniriem had it, but I assume he returned it.

THE PRESIDENT: All the defendant please check his own documents and see if perchance he does have it?

MR. MEHRAN: If your Honors please...

THE PRESIDENT: Yes, counsel.

MR. MEHRAN: Exhibit 994 is an old exhibit, and the one which is supposed to be in custody of the Secretary General still is in the custody of the Secretary General. We did not use anything but our own working copy.

THE PRESIDENT: Will the Secretary General go to the microphone and tell us what she knows about it?

SECRETARY GENERAL: Only the documents presented to me during the session are in my possession here in court. The documents that are presented to me previously to the day we are in session are in possession of the court archives, and if they request a document they only need to tell me and I will "pull" it from the archives.

THE PRESIDENT: Very well. Now, where is the document which was in use here this morning, that apparently did not come from the Secretary General's office? That is what we would like to know now.

DR. SILCHER: I can assure you, your Honor, that the Defense is not in possession of the photostat copy of this document, nor that it has ever been.

THE PRESIDENT: Then, counsel for the Defense, if you can pass that matter temporarily we will ask the Secretary General to get that document for you from the archives. If you will go on in the meantime, to some other subject, and then come back to it after the document is available to you.

DR. SILCHER: Yes.

THE PRESIDENT: Very well.

BY MR. SILCHER:

Q. Mr. von Knieriem, I am now passing to Prosecution Exhibit 1622, NI-9288 which was submitted during cross-examination. One moment,

your Honor.

A mimeographed copy was submitted to Mr. von Knieriem this morning and I really thought it would be here this afternoon.

THE PRESIDENT: Very well. We will hear with you for a moment. Take your time.

MR. STRACHAN: Well, we gave the German copy of this NI-928a to Dr. Felschman this morning, and have left only the English copy.

BY DR. SILCHER:

Q. Mr. von Knieriem, would you be good enough to look at the document, turning to page 5, to the passage which is marked? You don't have to read it aloud because I know you don't like to do that.

That is the passage which Mr. Ascher put to you this morning. You ask that your wishes be taken into consideration concerning patent protection in France. Was that discussed in this meeting and in this connection? And was it in connection with this general problem of the "New Order" -- general proposals regarding patent questions?

A. Yes, obviously.

Q. Or perhaps was it with reference to the special question of the French patent protection in the pharmaceutical field which has been discussed?

A. I think that this concerns the general problem.

Q. Are general "New Order" problems discussed in these minutes, or the specific new French settlement?

A. The minutes mention a report by Mr. Hans and negotiations with Rhone Poulenc.

Q. Well, then we are concerned here with pharmaceutical matters, specifically aren't we?

A. Yes, you seem to be right.

Q Would you now be good enough to look once more at NI 8454 which has been offered as Exhibit NI 1,875, the report in the Legal Committee, 2 October 1940 about the legal position of occupied territories. What was the reason for this report?

A The reason was the settlement of a complicated question which came up within this field of the legal department at Ludwigshafen. In Holland there was a company which was called International Hydrogenation Patents Corporation. We called it IHP. This company upheld a number of foreign hydrogenation patents. The company itself belonged 50 per cent to Standard Oil and 50 per cent to Royal Dutch Shell. Before Holland was occupied by German troops, the administration had transferred its seat to the Dutch Colonies at Curacao. The German government asked for an administrator to be placed there. The question arose, however, as to how far his jurisdiction went. In particular, the somewhat difficult question came up of whether the German Administrator of this Dutch Company would be in a position to dispose of Japanese patents belonging to that company, - whether these Japanese patents, to a certain degree, belonged to the property of the Dutch Company was a question which was discussed.

Subsequently a general presentation was made during this meeting, with respect to similar questions which could come up in dealing with occupied territories. The question just mentioned, as to whether the administrator assigned by the German government could dispose of Japanese patents was considered to be doubtful in this instance. It had not become acute at the time.

It was my personal point of view that this question would have to be answered in the negative, and that the German administrator could not grant any license with respect to Japanese patents. I have said that once this case becomes acute, the Japanese government would have to issue a compulsory license, a forcible license. That is the reason why it was stated in the contract which was submitted to me by the Prosecution during cross-examination, that the contract between Japan and I.G. Farben

with respect to the hydrogenation license, - that the Japanese government is to issue a forcible or a compulsory license.

Q In what legal department was this matter dealt with, and from what legal department did this report in the Legal Committee originate?

A It was worked upon in the Legal Department of Ludwigshafen, and one of the gentlemen in the Legal Department of Ludwigshafen made this report.

Q Did that mean that starting from that period of time, on the basis of negotiations in the Legal Committee, you had to concern yourselves with all questions relating to occupied territories such as the Hague Rules of Land Warfare, as they referred to all legal departments?

A No, certainly not. The Legal Departments dealt with these questions independently. That was really the reason for such reports before the Legal Committee. It was intended to make general suggestions. The specific development of such proposals was left to the Legal Departments themselves.

Q Arising from this treatment of the matter in the Legal Committee, was there at least a supervision over the further work on these matters by the other Legal Department?

A No, certainly not. The Legal Committee had no supervisory functions whatsoever.

Q One other point with respect to this report. If I understood you correctly, you were asked by Mr. Amchen about the acquisitions by I.G. Farben in Soviet Russia. Were questions referring to Russian territory ever dealt with in that report?

A Certainly not.

Q What is the date of the meeting of the Legal Committee and of this report?

A The 2nd of October, 1940.

Q And when did the war start with Russia?

A So far as I remember, that was in the summer of 1941.

Q Now I am turning to one last matter which I skipped before. It is

exhibit 994. Would you please hand this exhibit to Dr. von Knieriem?

Dr. von Knieriem would you please look at the document, - do not read it aloud. It is the second part of the entire document, the first page of the memorandum. Does this page look to you as being in proper shape to be submitted anywhere as an original document?

A Are you asking me whether there is any notation on it?

Q Yes, notations and handwritten corrections.

A Drafts and material in connection with this letter...

Q Well, I am not interested in the correct wording. I am just interested in the facts of the matter.

A Yes, a number of corrections are on that letter, and marginal notes which I cannot read.

Q How do you explain that in view of your previous testimony, when you said the whole thing was purely preliminary?

A We obviously see here that this is a draft which had not been completed.

DR. SILCHER: Your Honor, I have no further questions of Dr. von Knieriem at the moment.

However, during cross-examination, a passage has been put to him from Exhibit 334, that is NI 5187, it is to be found in Document Book 12 of the Prosecution. This is for Mr. Meer's testimony; quotation is included there, which contains a statement which has not been introduced as evidence in any other way; a former statement by Mr. Schmitz, and something out of this quoted statement by Mr. Schmitz was put to Mr. von Knieriem. This gives me occasion to repeat an objection which I raised when the document was first submitted. At that time the matter was postponed and the entire document was introduced some weeks later, during a session at which I was not present.

The Prosecution has this statement of Mr. Schmitz' at their disposal and the Prosecution would be in a position to submit this statement independently. However, they have not done so, and I assume that they have reasons for not doing that. I object to this statement being introduced

as a quotation, as it were. It is my view that the Prosecution would either have to introduce this statement independently, with everything which belongs to it, or that they would have to forego the submission of that statement. In my opinion it is not admissible to put in this document through "a backdoor" so to speak.

It is my objection, therefore, that these parts, approximately 1½ pages, containing the quoted statement by Mr. Schmits, are to be stricken from the record, and, accordingly, that this passage should not be put to the defendant.

THE PRESIDENT: It appears to the Tribunal that in view of the ruling which we have heretofore made, this defendant is unconcerned with the statement purporting to be a statement of Schmitz. The affidavit might be evidence against Schmitz, however, but that is not your problem.

MR. SPRECHER: Mr. President, I do not think that this matter can be disposed of that readily, and I ask you to hear me a minute. This is an affidavit of ter Meer, which is WI 5187, Prosecution's Exhibit 334, and in that affidavit Dr. ter Meer discusses a lot of things that happened when some of these defendants were preparing for an eventual trial in Kranzberg prison in the latter part of 1945 and the early part of 1946. Now at that time the defendant Schmitz turned over this memorandum to them, or they came to to have it themselves at the time, and they discussed it there in conference and the defendant, von Krieren, was a part of the discussion, and actually wrote a little memorandum which is now in the document book of the defendant, von Krieren, but which was merely identified and not offered.

Now a piece of paper, - I don't care what it is, - which is discussed between these defendants and about which they make statements, and are able to make statements, it does not seem possible can be excluded from evidence merely because the defendant Schmitz does not now want to take the witness stand. Now everyone else, including the defendant von Schnitzler, who was there in Kranzberg and discussed this statement, are available to talk about it if they so choose. This is an important point of departure concerning a number of things which we indeed will come to very shortly in this case, with respect to which there were charges and cross-charges as to who was telling the truth and who was not telling the truth, and I say say that the document which the defendant von Krieren made, although it has only been identified by the Defense, will most definitely be put into evidence by the Prosecution before this case is over.

THE PRESIDENT: Now here isn't this the situation: If the defendant von Krieren was present with Schmitz and ter Meer, and made any statements, he certainly can be asked about these statements. That is hardly the

situation you have here. This defendant is not required to answer as to any affidavits of ter Meer or Schmitz or any other defendant, unless he has an opportunity to cross examine the makers of those affidavits. I think we are on safe ground so far, are we not, counsel?

MR. SPRECHER: I don't think so, Your Honors for the reason that this document was a part of the res gestae of conversations which this defendant, von Knieriem, and other defendants had in Bramberg when they engaged in building up many parts of their defense, and therefore, the simple rule that they cannot now have cross-examination with respect to one of those documents, cannot be a means of excluding that document from consideration by Your Honors. I mean, that would be, it seems to us, to remove an important element that was a part of the res gestae of the other defendants who have testified about this matter.

THE PRESIDENT: I am not inclined to question your right to show the fact that there was a meeting at which this defendant was present with other defendants. Certain things took place, certain statements were made, either by this defendant or by other defendants in his presence. The question in my mind is whether or not you may use the affidavit of another defendant who may not take the witness stand, to establish the fact.

MR. SPRECHER: May I make one further point? I think I have been rather slow in coming to the most important thing. The defendant, ter Meer, I have been informed by Dr. Warndt, desires to have this document around. I am not certain whether he has put it into the document book or not; I think he has, in one of his document books, but if you go on in this exhibit a little further you see that ter Meer addressed this long letter to the Allied authorities in which he based his ground of approach, his attack against some of the statements in the Schmitz' statement, upon the Schmitz statement, and to say that the Schmitz' statement is not in evidence, and yet the ter Meer statement made to the Allied authorities as a report is in evidence, gets us to a very incongruous situation.

I mean that it is one reason why I think a technical rule of evidence

in these cases; -it involves a hearsay rule - can lead to very serious collateral problems, and in this case we very strenuously ask that you reconsider, if you have any question about the admissibility of this document, the whole problem involving the hearsay rule.

THE PRESIDENT: I do not think we would have any question about the admissibility of the document in so far as it might be considered to be evidence against the person who made the document, or made the affidavit. I am in some doubt, however, about it being a proper subject of inquiry in the cross-examination of this witness, unless he has an opportunity to cross-examine the maker of the document.

MR. SPRECHER: On that narrow point, Mr. Amchen did make an error, when he said that Ter Meer had said this, and we think that that matter has been completely cleared up so far as the examination of this defendant is concerned because Dr. Silcher or Dr. Feldmann, whoever it was is perfectly correct in pointing out that although this is part of a Ter Meer affidavit because it is the very foundation for the later Ter Meer report which we had nothing to do with incidentally, - was merely included in the Ter Meer statement. I think we could withdraw the question entirely.

DR. SILCHER: Your Honor, I believe that this question of whether the Ter Meer statement would have existed at all or in this form without the Schmitz statement, is not relevant at all in this connection. Ter Meer has given his affidavit. If somebody writes such a statement, many reasons can have motivated him: certain events could have taken place, internal considerations may be valid, or one could even write such a statement on the basis of what somebody else had said. That in my opinion proves nothing. The question of whether the statement of another person can be introduced here, as admissible evidence, that is quite an independent problem and that is what we are concerned with here. Here again there are two different points.

In the first place, I object to this form of introduction as such. I object to the form of introduction as a quotation. It really is not an affidavit by Mr. Schmitz. It is not even an unsworn statement by

Mr. Schmitz as it appears here. It is merely a quotation and I object against this form of introduction generally. The moment Mr. Schmitz had refused to appear on the stand, this probably makes no decisive difference to Mr. von Enderien and to the other gentlemen. However, it is important to Mr. Schmitz himself. On the other hand this quotation cannot be used against him. On the other hand, it is always possible that the statement itself, is being used against him.

That is the first problem which I brought up for discussion, and that is why I am awaiting the decision of the Tribunal. If the objection is to be overruled from this point of view, then we have another point of view to consider, and I think it is only the other point of view which Mr. Sprecher has just talked about so far, - that such a quotation which is not an affidavit and not even an ordinary signed statement, cannot be used against the other defendant to a greater extent than an affidavit of the co-defendants, that is quite clear. In other words, if Mr. Schmitz is not to be called as a witness, and if, therefore, it is impossible to cross-examine him by other defense counsel, then the statement quoted here, can be just as little considered against the other defendants as if it had been just an ordinary affidavit by Mr. Schmitz, but one has to distinguish between these two objections, the first of which goes somewhat farther than the second.

THE PRESIDENT: Now, the Tribunal has heretofore made its position clear, we think, with respect to the funding effect of the affidavit of one defendant as to his co-defendants. We have said that the voluntary affidavit of a defendant is in the nature of an admission. It is competent if against him; that if he takes the witness stand he is then a witness for all purposes and when he submits himself to cross examination for whatever his affidavit may be worth and it may bind all defendants. It is our view, however, that you cannot circumvent that rule by cross examining this defendant as to the affidavit of any other defendant until such time as the other defendant has submitted himself for cross examination. We think your present inquiry is premature. We cannot and will not anticipate what defendants are going to take the witness stand or not going to take the witness stand. We have no indication from the defendants as to their intentions which they may change. They have a right to change. Defendants who have said they will not take the stand may take the stand. Defendants who have indicated they will testify, may not. If the defendant Lee takes the witness stand and subjects himself to cross examination with reference to this affidavit, then you have a different situation with respect to this defendant. You shall have an opportunity at that time to cross examine Lee as to his affidavit and if any evidence is produced against him that he has otherwise not had an opportunity to combat or meet he may rebut it. We sustain the objection at this time. We not only think that we are correct in this ruling, but that this morning when the Prosecution confronted this defendant with this affidavit at this time, it was premature.

MR. SPENCER: Mr. President, I don't quite understand to what you are sustaining the objection. There's no objection. There was a motion made, as I understood it, by Dr. ---

THE PRESIDENT: Perhaps, counsel, you are right. We are not striking this affidavit out of the record, if that's what you mean. I think

that perhaps that was the motion -- to strike it from the record. It will not be stricken from the record. It's in evidence and it's in evidence against the author of the affidavit. It is not in evidence against a co-defendant until the author of the affidavit has submitted himself to cross examination.

DR. SIECHER: Your Honor, I don't know whether you understood my motion and my objection quite clearly. My objection was not directed against the affidavit of ter Meer which is Exhibit No. 334. My objection is directed against the introduction and the use of a quotation in that affidavit, the statement by Dr. Schmitz.

THE PRESIDENT: That objection is overruled for this reason. It may be evidence against someone else, although it is not at this time evidence against this defendant. As we understand, you have an affidavit of ter Meer which makes a quotation of a statement purporting to come from Schmitz. That is, nevertheless, the affidavit of ter Meer and it's competent as to ter Meer. It may be competent or may not as to Schmitz, we will not pass on that now. But in any event, it's properly in evidence as the voluntary statement of ter Meer and for that reason we could not be warranted in striking the exhibit from the record until ter Meer is cross-examined as to the affidavit. It's no evidence against this defendant and not a proper subject of cross examination of this defendant. Now, is that clear?

DR. SIECHER: If there is any question about it we will withdraw my remark about this affidavit this morning.

THE PRESIDENT: Well, we are not bound by any remarks of counsel, helpful as they sometimes may be, so we will not be worried about that. But this affidavit -- it isn't incumbent on counsel for von Bamler to move to strike out of evidence an affidavit that may be regarded as evidence against another defendant. The other defendant will answer to that. If we hold, as we do, hold, that it isn't now evidence against this defendant and that this defendant should not be held to answer to the affidavit, that's all this defendant is entitled to.

MR. SPEICHER: Mr. President, we are a little confused about just where we stand now and I would like to ask for enlightenment. Our understanding was that these affidavits were in evidence for all purposes subject to a later motion to strike them in the event that a particular defendant did not take the stand and thereby subject himself to cross examination. And the statement you just made concerning the matter seems to us to have a slightly different interpretation.

THE PRESIDENT: Well, as I said before, we don't know who is going to take the stand and who isn't, and what we have said is meant to protect the rights of a defendant who may be implicated by the affidavit of a co-defendant. If he desires to cross examine the defendant and the author of the affidavit does not make himself available for cross examination. Now, that's as far as we need to go now. Now, we should hold with respect to this matter that this affidavit is properly in evidence, but that under the record as it now stands it cannot be regarded as evidence against this defendant who is now on the witness-stand. It isn't necessary to go any further than that. What we said applies to the present situation, and I think, applies to the cross examination in which he was asked about it by the Prosecution this morning, because we think likewise that we are aware. Now, Counsel, you may just ignore any implication arising out of that affidavit of the fact in which purportedly the defendant Schmitt is noted. We are not concerned with that now so far as this defendant is concerned. If that becomes applicable to your client you will have an opportunity to cross examine the author of the affidavit and rebut the evidence if you think it's rebuttable and if you wish to avail yourself of that privilege.

MR. SPEICHER: At the moment I have no further remarks to make, Your Honor and I have also concluded my re-examination of Mr. von Paetrick. Mr. Polchmann had to make another statement with respect to our documents.

DR. PELCKMANN: Dr. Pelckmann. Your Honor, you had asked me with regard to the last documents of Document Book Kriterion No. 4. I should now, your Honor, like to submit Document 27 and Document 28, at the moment only for identification. The second document, Document No. 28 has already been introduced by the Prosecution before as Exhibit 137. It's the order of business of the year 1938, the by-laws of 1936; 27 has been offered for identification as Exhibit 26, and 28 has been offered for identification as Exhibit 29.

THE PRESIDENT: You mean, counsel -- pardon me, 27, Document 27 you are now offering as your Exhibit 26?

DR. PELCKMANN: Yes.

THE PRESIDENT: And Document 28 you are offering as your Exhibit 27, however, both for identification?

DR. PELCKMANN: Yes, both for identification. These by-laws are important material with respect to the distribution of the business within the Vorstand and the criminal responsibility which might be in connection therewith.

With respects to those questions, if it's at all possible, we should like to submit one or two more affidavits. However, they have not yet been drafted and therefore are not ready to be submitted. A number of conversations will have to take place among defense counsel because these are questions important to all. Therefore, I am not in a position to submit these affidavits and I am not even yet sure whether we shall do that at all. For that reason I should like to ask to have the right to submit further affidavits of that nature in the future. That would otherwise bring me to the end of my presentation of evidence.

THE PRESIDENT: Very well, you may use your own judgment as to whether or not you wish to supplement your documents with affidavits or depositions in due time. Now, is there any further examination of this defendant desired. Dr. Hoffmann?

RE-DIRECT EXAMINATION

BY DR. HOFFMANN:

Q. Dr. Hoffmann, counsel for the defendant Ambros. Witness, one of your defense counsel had asked you whether in the Orgeloid contract the word "mustard gas" appears. You answered with "no". I am now asking you, can one deduce from this reply of yours that you would not have signed this contract had there appeared the word "mustard gas" instead of the chemical formula?

A. I think I even would have signed it then.

DR. HOFFMANN: Thank you very much.

THE PRESIDENT: Is there any further examination of this witness?

JUDGE HERBERT: Dr. von Kaiserlin, I have one or two questions.

Were votes ever taken at meetings of the Farben Vorstand?

A. I cannot remember that a formal taking of votes had ever taken place. There may perhaps have been one exception. We may have once done that when the contract between I.G. Farben and I.G. Chemie was dissolved. But I am not quite sure about that.

JUDGE HERBERT: Then, under the practice of not taking votes at the Vorstand meetings, was it commonly understood by members of the Vorstand that when a report was made, if dissent was not expressed, that that amounted to Vorstand approval of the policy or action reflected in that report?

A. Yes, that is to be assumed. That is, based upon the information of the various Vorstand members resulting from any report.

JUDGE HERBERT: Would the situation be generally the same with respect to the TEA?

A. Yes, if any decisions were reached in the TEA and if there was no dissenting opinion, the situation would have remained the same.

JUDGE HERBERT: If an important difference of policy arose within Farben where did the responsibility for resolving that difference of opinion lie?

A. According to the by-laws of the Vorstand one could tie a vote and the majority would decide and if the votes were equal the party became decisive which had the vote of the president.

JUDGE HERBERT: Are you referring now to a vote in the Vorstand?

A. Yes.

JUDGE HERBERT: But you recall only one instance in which there was a vote. I think that's all the questions I have.

A. According to the by-laws of the Vorstand one could take a vote and the majority would decide and if the votes were equal that party became decisive which had the vote of the president.

JUDGE HERBERT: Are you referring now to a vote in the Vorstand?

A. Yes.

JUDGE HERBERT: But you recall only one instance in which there was a vote. I think that's all the questions I have.

THE PRESIDENT: Now, gentlemen, does this conclude the examination of this defendant, subject, of course, to his being recalled if something should arise which in the opinion of his counsel would warrant it and the Tribunal thought it was proper. Then, the defendant will be excused from the witness stand and may take his place among his associates. Now, gentlemen, there have been a good many documents used here. Please take care that those that belong to the files get back to the Secretary.

JUDGE HERBERT: Dr. Berndt, are you ready to proceed? We are informed that the Document Book No. 1 which you need is on its way up to us now, and we thought perhaps you might be able to proceed.

DR. BERNFT(Defense Counsel for defendant Ter Meer)

Your Honor, may it please the Tribunal, in my opening statement I have already permitted myself to point out that your task, Your Honors, is particularly difficult because you, as Americans are required to make a judgment upon situations which existed in Germany and which were unknown to you at the time. I am particularly referring to economic situations. For this reason, we of the defense have arranged amongst ourselves that one of our gentlemen would picture and demonstrate the entire economic situation as they took place in the German Reich. This task has fallen upon me and for that reason I have compiled three document books which, unfortunately, are not available as yet and which I therefore cannot introduce. The situation as such I cannot demonstrate, but I can have it illustrated to you through the means of a very expert witness. A minister of economics has declared himself to be ready to do that but who, on the other hand, is prevented from coming here because at the moment he is active in the Control Council. I should therefore like to reserve the right to call this expert witness who will merely give you a picture about the economic situation in the Third Reich.

In addition to these three volumes I have permitted myself to submit eleven volumes on behalf of the defendant Ter Meer. These books have been handed in more than ten days ago, but unfortunately, we have no news about them up to date. It may perhaps seem quite a lot, if on behalf of one defendant eleven books are being submitted and I should therefore like to emphasize expressly that a part of these volumes refer to facts which not only apply to the defendant Ter Meer but apply to the entire Vorstand, in particular to those gentlemen who are technical reports.

We shall endeavor to conduct the presentation of evidence on behalf of the defendant Ter Meer without the use of witnesses. We shall confine ourselves to his own testimony and to the presentation of documents. I should therefore like to ask you to permit Dr. Ter Meer to enter the witness stand.

THE PRESIDENT: Dr. Ter Meer may take the witness stand.

(FRIEDRICH HERMANN TER MEER, a witness, took the stand and testified as follows:)

THE PRESIDENT: Will you raise your right hand, Dr. Ter Meer, say I, and state your name.

THE WITNESS: I, Friedrich Hermann Ter Meer ...

THE PRESIDENT: Now repeat after me the oath.

Swear by God, the Almighty and the Omnipotent, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

You may be seated.

DR. BERNDT: Your Honor, I am just witnessing the arrival of Document Books 1 and 3.

THE PRESIDENT: Dr. Berndt, would you prefer to offer your documents before interrogating your client?

DR. BERNDT: I intended to arrange the examination in the following way. I intended to examine Dr. Ter Meer and during the examination, submit a few documents grouped together. Book 1 will be divided into two halves for that purpose.

THE PRESIDENT: Very well. The Tribunal now has your Book 1 for your information.

MR. SPEICHER: Mr. President, for Dr. Berndt's information, the prosecution still has no copy.

THE INTERPRETER: Nor have the interpreters, Your Honor.

THE PRESIDENT: Just a moment. We can spare one up here for the time being, if it will serve the purpose. We could, in fact, spare another one, if necessary.

MR. SPEICHER: When we do get our copies, I will give the copy I have just borrowed back to the Secretary or to the Tribunal.

THE PRESIDENT: Very well. Then you may proceed, Dr. Berndt.

DIRECT EXAMINATION

BY DR. BERNDT:

Q. Doctor, at first, be good enough to give me your full name for the record.

A. Friedrich Hermann Ter Meer.

Q. How old are you?

A. 63.

Q. May I ask you since when you have been in prison?

A. Since the last days of April, 1945.

Q. Would you now be good enough to give me a short survey of your personal development?

A. I was born in the year of 1884. I visited the secondary school, finished it with success, and then studied chemistry. After staying abroad for half a year in England and France in order to study the languages, I entered into the Chausson Fabrikker Werke, formerly Meister Meer, in Mordingen which my family participated in to a considerable extent. My father at the time was head of the plant. In the plant of my father I was in charge of a number of production places in order to become acquainted with the chemical technical questions. A short time thereafter, however, I was sent to northern France in order to open there a production branch of my firm and to be in charge of it for the first few years. This was a small factory for the production of dye stuffs in France because, in France, high protective tariffs existed for dye stuffs and because we, therefore, lost considerably in exports. In 1913 I returned to Mordingen and continued to work in the plant. I was there when the war broke out in the year of 1914. Since I had no military training, I remained at the plant and later I was kept there officially because most of our chemical workers had been drifted into the army and because our production in Mordingen was considered to be essential. I stayed there throughout the entire war. In the year of 1918, the Mordingen plant joined the Community of interest of the Deutsche Anilin-Fabrik plants. As a consequence, in the year of 1925, when the merger of the 8 firms took place, it was incorporated into the I.G. Farben Industry Aktien-

gesellschaft. At the time I was already in the Vorstand of the Uerdin-
gen firm and I was, therefore, taken over as a proper Vorstand member in
the new large firm.

Q. May I interrupt you here. Before dealing with your activity
in the I.G., let us remain for some time at Uerdingen. Until when did
you live at Uerdingen?

A. My residence was in Uerdingen formally until the year 1920.

Q. As you told us, you were there in the Vorstand of the factory
which was formerly owned by your father.

A. Yes.

Q. And what was your activity there beyond that?

A. In the year of 1919 I was the head of an employer's association
of the chemical industry and I dealt with the area of the left bank of
the Rhine. From 1919 until 1920 I intensively worked in addition to
my current work in this organization of employers.

Q. What other services did you give during that period of time?

A. At that time I was a member of the Democratic Party and, I
can't give you the year, but approximately in the year of 1920 I was
elected into the municipal council of the city of Uerdingen where I took
a great interest in the technical installations of this city -- gas,
water, electricity, etc. -- since purely political work has never been
my inclination in my life.

Q. In order to supplement your last remark, would you be good enough
to tell us the following. A municipal council, does that ever concern
itself with politics?

A. Well, Party politics at the most, but in the little city of Uer-
dingen that wasn't a very serious matter at all.

DR. ERNST: Since a number of the members of the Uerdingen factory
of I.G. Farben have found out that charges have been raised here against
Ter Meer, I have received a multitude of letters from them. I will not
use all of them, but I considered it my duty to incorporate some of these

statements in Document Book 1. Before we turn to the further facts of my client may I be permitted to offer these documents into evidence?

At first, let me point out that my client has written a curriculum vitae and that this curriculum vitae has been introduced as Exhibit of the prosecution 311 to be found in Document Book 11, page 151 and following in the English and page 143 and the following in the German book. I refer you to that exhibit and I believe that I don't have to attach another exhibit to it on behalf of my client.

THE PRESIDENT: Dr. Berndt, would you repeat the prosecution's exhibit number for me?

DR. BERNDT: This is Prosecution Exhibit 311 to be found in Document Book 11, page 151.

THE PRESIDENT: Thank you.

DR. BERNDT: Ter Meer Document 3 I am offering as Exhibit 3. An affidavit of Bannann who, at that time, was the head of the Betriebsrat (the factory council).

THE PRESIDENT: Pardon another interruption, Dr. Berndt. I recall that during the presentation of the prosecution's case there were some instances in which defendants had exhibits marked for purposes of identification. I am sorry I do not have the list. I remember some were offered on behalf of the defendant Abrams. I am wondering if there were any offered on behalf of Dr. Ter Meer so that we do not have an overlapping of numbers here. Do you remember whether you did or not?

DR. BERNDT: No piece of evidence has so far been submitted on behalf of Dr. Ter Meer.

THE PRESIDENT: Just a moment. You may go along.

DR. BERNDT: The affiant was chairman of the workers, or factory council of the plant Urdingen. He holds the same position today. He states on page 1 -- this is page 11 of the book -- that Dr. Ter Meer devoted his entire working capacity and all his energy to the welfare

of the plant and that particularly during the difficult times of the past war years he did much to maintain the plant. He stated that Dr. Ter Meer was entirely non-political and that he was particularly popular among the employees because he physically cooperated in the work and that he didn't shy away from personally climbing into a boiler. He testifies that Ter Meer was a man who was particularly interested in social welfare, who used his entire influence in seeing that all the workers, even during difficult years, did not lose their jobs. At the end of it is stated that Dr. Ter Meer, after 1953, once gave a speech on the occasion of a festival at Urdingen and that it became apparent from that speech that he was entirely non-political in his attitude.

As Exhibit 2 would you please accept into evidence Document 4 to be found on page 15 of the Document Book 1. This is an affidavit by a Dr. Jussé who, since the 15th of September 1912, has been active at the Urdingen plant. He, at first, certifies to the open and sincere manner in which my client carried on negotiations. Whatever he promised, he kept. At the end he certifies that he never noticed that Dr. Ter Meer was politically active in any way.

THE PRESIDENT: Just a moment, Doctor. We'll recess at this time.
(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. SCHMIDT: Mr. President, before I continue I should like to make a further request. I have just heard that Book III is not ready yet. We have only Book I. Book III by tomorrow morning.

JUDGE HERRILL: "We were informed today noon that the books had been distributed. The English did not receive them. I just checked at recess, but we cannot do so again until we close. I will contact them again immediately upon recessing this afternoon.

DR. SCHMIDT: Thank you.

I continue to submit documents.

I offer Document Tor Moor No. V as Exhibit 3. Dr. Frank, who has known the defendant for 35 years speaks about him. He says that Dr. Tor Moor's father, when he was young, always urged him to work hard. He says that he showed great social understanding and was always helpful. He then confirms what we have heard in an earlier affidavit, that on a family anniversary Dr. Tor Moor made a speech saying that he was not caught up in National Socialism.

A statement of Kempkens, Document VI, page 20, will be Exhibit No. 4. He states that Dr. Tor Moor was a tireless worker on behalf of the Plant, and that he was especially interested in the welfare of his employees. Mr. Kempkens was known as an anti-Fascist in the Plant. He says that the defendant also knew his attitude, but that in spite of everything Dr. Tor Moor always treated him as an old co-worker.

The next exhibit will be No. 5, Document VII, page 23, an affidavit of Rintzen. It emphasizes that it was a joy to work with a man who did not mind working any hour of the day or night, and for whom there was no job so dirty he would not touch it. This attitude brought him the respect of all the workers, because he was the son of the manager and the main proprietor of the Firm. Not uninteresting in this affidavit is the fact that on Page 24 at the bottom the affiant states that Dr. Tor Moor was always especially interested in the welfare of the prisoners-of-war and foreign workers, and demanded that they should be treated decently; just like all other

workers, and that they should be housed and fed adequately.

As Exhibit No. 5 I offer Document VIII, page 26, an affidavit by Mr. Papp, who worked in the Plant as a locksmith. He says that Dr. Tor Meer was especially interested in the sick colleagues, and often divided his lunch with them. He also mentions that after Dr. Tor Meer took an interest in the prisoners-of-war who were in the plant during the First World War, he personally checked their billets and their food and saw to it that they had a suitable program for their leisure time. That is on page 25. The French nick-named "Director Ben". That is on page 27 at the top.

I offer Document IX, page 29, as Exhibit 7. This is an affidavit of Wilhelm Imenfeld, who has known Dr. Tor Meer, for 40 years. He says he was strict but also just as a superior, and he says that after 1933 the greeting was never in a National Socialist way, and he says that for people in exposed positions like Dr. Tor Meer this was especially dangerous. That is on page 30 in the English book.

We have heard that Dr. Tor Meer worked in the Employers' Association in Urdingen. Document X, page 31, offered as Exhibit No. 8, gives some information about this. It says that Dr. Tor Meer always tried to have a relationship of confidence between this Association of which he was in charge and the Trade Unions of all political tendencies. He was always particularly interested in preventing party politics to interfere with the activities of the Association.

These are the affidavits which I want to offer concerning Dr. Tor Meer's work at Urdingen.

DR. STRUM: (continuing) Now, before I ask the defendant to continue, I should like to give a brief survey of the presentation of the case which I have in mind. I shall now ask Dr. Tor Meer about his career in the I. G. Farben, then about his stay and his work abroad, his connections with the Party, his offices outside..... We shall then discuss the fate of Farben, and after a brief survey of the community of interests and the merger, we shall deal with the three offices which Dr. Tor Meer held in Farben, in the Vorstand, the Control Committee, the TGA, and as Sports Chief. We shall deal particularly with the TGA. We shall then come to the question of ~~expansion~~ ~~work~~ and the ~~Latvian~~ ~~(self-sufficiency)~~ and the question of re-orientation. Following that I should like to offer Document Book III, in which I deal with new plants, turn-over and other business, and technical processes in Farben.

We then come to Document Books II, I and IX, about air raid protection, secrecy, measures and mobilization plans. Secondly, we shall take up one of the most important questions, the main sphere of work of my client, that is Buna. With the aid of Document Books IV and V we shall present Buna in Germany, and with the aid of four books, Nos. VI, VII, VIII and IX we shall deal with Buna in the United States. After that I intend to deal with the knowledge of my client regarding aggressive warfare and his alleged participation in a conspiracy.

In conclusion we shall take up I should mention the question of foreign workers, concentration camp inmates and assets.

You will have noticed, Your Honors, that I have not mentioned Count II. I should like to postpone examining my client on this point. In my opinion I am forced to do so because the Document Books of Dr. von Schriteler containing the main documents about Pruncker are not available to me yet, and since my client was involved in all these cases as a technical expert, I cannot examine him on these questions until I have seen the evidence of the commercial men. Also I myself still

have some documents outstanding, so that I should like to postpone the examination on Count II.

DIRECT EXAMINATION

(continued)

Q Dr. Ter Meer, we now come to your career in Farben; will you please describe it to me, just outwardly?

A In 1926 the head of the dyestuffs business in Farben, the technical head, Dr. Kroll, took me to America with him, where together with the American firm, the Gracelli Chemical Corporation in Cleveland, Ohio, on a 50/50 basis we had two dyestuffs factories. These dyestuffs factories, because of the competition of the dyestuffs factories in America which sprung up during the War and afterwards, had come into financial difficulties and I therefore suggested to my older colleague that for the purpose of reorganization of this dyestuff factories I should remain in America for some time. I remained from 1926 until 1929 in the United States, of course with interruptions, when I spent some time in Germany to learn about new technical processes and to take records back to America with me. In 1928 I had moved from Gerdlingen to Cologne and entered the Directorate of Leverkusen, where I worked from 1929 on. In August or September 1929 Professor Bosch appointed me Sparte Chief for the so-called Sparte II. I shall come back to that later. That meant I worked partly in Leverkusen and partly in Frankfurt. Then from about 1932 or 1933 on I was almost exclusively in Frankfurt, and therefore I was no longer really working in a plant. I was just working in the big administrative building in Frankfurt, but I did inspect the plants in my Sparte. My main field of work up to that time had been dyestuffs and dyestuffs intermediates, as well as the heavy chemicals needed for their production. When I took over the management of Sparte II my work was expanded, and by the experience, knowledge and suggestions which I had gained in the United States I preferred to work in the field of related organic substances, such as solvents, gun-lacs plastics

and Rum. In 1934,-1935 -- the beginning of 1935, I took over all the negotiations of my firm with the Berlin authorities with respect to Rum. At the same time I continued my foreign work to a large extent. Aside from my stay from 1926 to 1929 in the United States, I made seven more trips to the United States. I was frequently in France, England, Italy, Switzerland, and sometimes in Spain and Sweden. I had holdings in most of these countries or important contractual arrangements, such as the Dyestuffs cartel. I attended the meetings of Dyestuffs cartel as technical expert for Farben. My work remained in practice unchanged. At the outbreak of the War a large part of the foreign work was eliminated up to September 1943, when I was called by the Speer Ministry to Italy, and from September 1943 to April 1945, that is until I was taken prisoner, I worked only in Italy. My task there was to direct chemical industry, and to bring it into harmony with the existing demands of the country's war economy, to keep up production and to start it up again where it had been stopped.

Q So that we don't forget it, will you please tell us again when you went to Italy?

A September 1943.

Q You don't remember the day?

A About the 15th.

Q Approximately the 15th of September 1943. Thank you. You have just spoken at some length of your activity abroad; from the statements about your person, I have seen that you were on various Italian, Spanish, Swiss and American firms, on the Aufsichtsrat, the Board of Directors. Will you please tell us about that?

A I. G. Farben Industry had interests in two Italian Dyestuffs Factories, and at least two other factories in the Emergencies field. The two dyestuff factories interested were held jointly with the biggest chemical group Montecatini, who had 51 per cent, and we had

49 per cent in the one firm, and in the other smaller factory, the proportion was the other way around. In Spain Fröben also had joint interests with a Spanish Industrial Group. This included one medium large dyestuffs plant, where the interest was 50/50. In these two Italian and one Spanish factory I was on the Board. In Switzerland we had holdings in the Durend-Sauvageant firm, which was given up at the outbreak of War. I was also on the Board of this firm.

Q Will you please mention the two business firms in America with which you were in close contact?

A My work in America was with the Gracelli Dyestuffs Corporation in New York. That is the firm in which Gracelli Chemical Corporation of Cleveland, Ohio, had 90 per cent interest and Parson 90 per cent interest. Then this Gracelli firm dyestuff Corporation temporarily became 100 per cent the property of E. C. Parson, because the Gracelli Chemical Corporation, Cleveland, merged with a plant company in Wilmington, and the interest in the Gracelli Dyestuffs Corporation was given back to Parson. Later the Gracelli Dyestuff Corporation became part of the General Aniline and Film Corporation by merger. The General Aniline and Film Corporation is the successor of the I. C. Chemical Corporation in New York, which was founded about 1929. I was Director of the Gracelli Dyestuffs Corporation, later the Aniline Works, for many years, and in later years nominal Director of the I. C. Chemical Corporation in New York. I think that was until about the middle of the 1930's.

Q. I believe that we can leave this point. I have only one brief question. It is not necessary to give any figures, but could you give us your income from Farben, especially what the picture was during the war.

A. Yes. My income was such that from about the middle of the 1920's on I had a certain set income which never changed until the end of the war. This was the smaller part of my income. The larger part consisted of royalties calculated on the basis of the distributed net profit of I. G. Farben Industry. I can not give this exactly because I can not have access to my records as my house has been confiscated, but I am quite sure that in about 1932 or 1933 the commission percentage was set and was not changed until the end of the war. During the war the commission was calculated on a theoretical set figure and was not changed at all.

Q. A questionnaire of the prosecution once asked whether you had any income from the NSDAP or any Party institutions.

A. No, I did not have any income from any connections with the Party or any office connected with the Party.

Q. Then I can go on to your connections with the Party. Before 1933 did you have any connections with the Party?

A. No.

Q. In 1933 did you join the Party?

A. No.

Q. Did you become a member of any other branch of the Party?

A. No.

Q. Not even a sponsoring member?

A. No.

Q. You had an automobile in 1933?

A. Yes.

Q. Did you join the NSKK?

A. No.

Q. Did you yourself read the popular book "Mein Kampf"?

A. No.

Q. Did you know the Party program?

A. Of course I did know the Party program in broad outline. First of all people talked about it. Second there were some negative points for us and we had discussed these points long before 1933. And then of course we read about it in the newspapers and we heard speeches from the big Party men, so that I can say I was familiar with the program in general outline. That was one of the reasons why, up to 1933, I had a completely negative attitude to the Party. The Party was opposed to the big concerns and a maximum income was to be set and the attitude of the Party organs before 1933 was in many respects very repulsive to me. In the Reichstag the National Socialists used to vote with the Communists. When I lived in Cologne -- that was between 1928 and 1932, I personally observed in what way Mr. Ley and his followers "conquered" Cologne, as they used to say -- that is to say conquered it for the Party. There had been brawls of the worst kind with members of the Catholic Centrum Party in public places. I saw that in November 1932 the Communist transportation strike in Berlin was carried out with the aid of the National Socialists and also I had seen often enough in the newspaper that the recruiting of the National Socialists or the propaganda for votes from the German farmers was supported by attacks on big industry in general and Farben in particular, because they charged the farmers too much for nitrogen. I believe if an industrialist from an old industrial family heard all that then that was enough.

Q. When did you join the Party?

A. In 1937.

Q. Were you a member of any Party organization before that?

A. At that time in Germany one automatically became a member of various Party groups. For example, I was, of course, a member of the Association of German Chemists. This Association of German Chemists one day became the National Socialist League of German Technicians.

One could do nothing about that. I was a member of various rowing clubs and one day they became part of the National Socialist League for Physical Culture. As from 1934, everyone in industry had to become a member of the German Labor Front or else quit working. These things were automatic. One could not do anything about that.

Q. Up to 1937 you did not voluntarily join the Party or any of its branches?

A. No.

Q. Now, how did you come to join the Party in 1937?

A. In May 1937 the president of the Frankfurt Chamber of Commerce called upon me at my office and told me that the Gauleiter had told him to win me over to the Party. He gave me the customary recruiting forms and application forms to apply for membership. I expressed doubts and politely showed the president of the Chamber of Commerce out and that settled the matter as far as I was concerned. At least that is what I thought. A few weeks later, I think it was a few days after the first of July, the same man, who happened to be my neighbor in Kronberg near Frankfurt, came to me one evening. He was rather excited. He said very reproachfully, "Why didn't you send in your application?". I said "Well, I suppose you have heard from my reaction that I wasn't very much in favor of it". Then he said to me that the Gauleitung in Frankfurt had called him up late at night and had urged him to see to it that my application was handed in the next morning, otherwise it would be too late. Probably the list was closed on 1 July or some such thing. I continued to refuse, even though the man told me that the result might be that I would no longer be able to continue my work as a Vorstand member with Farbion in Frankfurt. I said I would take these consequences upon myself. Then the president of the Chamber of Commerce said to me that he felt obliged to give me a piece of friendly advice. He said I no doubt knew that to obtain a visa for trips abroad one needed the approval of three offices -- that was the local office, the Landrat, then the Chamber of Commerce, and third

the Gestapo. I no doubt did not know that it required only a hint from the Gauleitung to prevent my going abroad in the future, by making the obtaining of a visa so difficult that it would not be possible for me to attend regular meetings. I admit that this fact influenced me and impressed me a great deal. I had travelled a great deal at the time, especially abroad. By my former periods of living abroad I had a great personal inclination toward continuing my work abroad. I am an enthusiastic Alpinist. I want to Switzerland or to northern Italy to the mountains every Fall, and last but not least, I had a married daughter and grandchildren in Sweden, and I wanted to go on seeing them. This last consideration induced me to send in my application to join the Party, but with two definite conditions. First of all I stated, tell the Gauleiter that I will never swear to the Party program. We will not talk about the general Party principles, but the attitude of the Party toward the Jews, the invasion of religious questions and the suppression of the free press in Germany alone are points which I will not endorse. Second, I have no intention, in this small town of Kronberg where I now live, of attending meetings of the local Party members and listening to lectures by people far below me socially and with respect to their education. I know that the latter condition was fulfilled because up to the war I was left alone as far as local invitations were concerned and I never took the oath and I never received a Party book.

Q What dues did you pay as a Party member?

A I paid the minimum dues of my Gau for my income group, never one pfennig more.

Q Did you or your wife, who paid for you, ever have any difficulties regarding donations?

A Yes. During the war in this town of Kronberg we had many unpleasant incidents because my contributions were not high enough, and because I did not go beyond the minimum dues of my income group.

Q For the sake of clarity I want to ask, did you ever develop political activity within the Party—did you ever hold any office? Did you ever have any distinction from the Party?

A No.

Q Did you receive any advantages from the Party?

A No, I don't know what that could have been. Only insofar as if I had not joined the Party, I would have disadvantages, yes.

Q I am merely asking because at the end of an interrogation it says you had no "direct advantages from the NSDAP".

A Yes, the reason for this answer was the following. I was asked whether I had any advantages through the Party, as to income specifically. And I said no. Then the interrogator asked me, I believe it was something like this, now, if the Party had not done away with unemployment and had not introduced the autarchy then perhaps your firm would not have earned so much money and your commission would have been reduced. That is where my answer came from.

Q After 30 January 1933 did you write anything of a political nature — did you give any political lectures?

A No I never made any political speeches. If I ever made a speech, which was not often, it was about my own work, chemical engineering.

Q Did you ever speak on the radio?

A I believe it was in 1940 or 1941, I made a radio speech on modern chemical developments. This was to be transmitted to America.

Q Did you have anything to do with big Party men? With whom and how often?

A In the beginning of 1936 when the International Automobile Exhibition in Berlin opened I talked to Hitler. On this occasion I.G. Farben Industry had, for the first time, exhibited a number of samples, intermediates, and finished products of Buna. This was the first time that it was exhibited to the public. Hitler visited the Farben booth and since I was present I was introduced and I talked to him about ten minutes about Buna and its quality, its price, and so forth. I never talked to him after that. In addition I know Ley, whom I met only once when I was introduced to him on some public occasion. I never spoke to him again. Once I visited Reich Minister Schwerin von Krosigk in connection with Buna negotiations. I shall mention that again later. Other Reich Minister I know were Schacht, whom I saw for the first time, I believe, in 1930 in New York when Schacht was making a speaking tour through the United States to bring it to the attention of the American public that Germany could not continue reparations payments. I saw Schacht socially a few times and later again at Buna negotiations. I shall touch upon that again later too. Then I knew Minister Speer. I met him in September 1944 in Italy. And then, of course, I know people like the Gauleiter of Frankfurt, and Koppler, the economic advisor of Hitler.

Q Let me interrupt you. Something occurs to me about Koppler. Did Koppler ever invite you to attend a meeting of the so-called Circle of Friends of Hitler?

A No.

Q You were never present at such a meeting?

A No.

Q Did you know that Dr. Baotofisch was a member of this Circle of Friends?

A Yes, I did.

Q From whom did you learn that?

A In August 1939 I spent about three weeks in Karlsbad with my wife. An industrialist from the Rhineland named Roenert was there whom I did not know. But the ladies got acquainted and we played bridge together in the evening. On such occasions one generally discusses mutual acquaintances and Mr. Roenert said he knew my colleague Buotofisch. He said that he met him in the Himmler Circle.

Q Was the membership of Dr. Buotofisch in the Circle of Friends ever mentioned at Vorstand meetings of Farben, or meetings of the Central Committee, the TdA, or in any other important group?

A In my presence the membership of Dr. Buotofisch in the Himmler Circle of Friends was never discussed and there was no reason to do so because I always considered that a purely private matter. If Mr. Buotofisch wanted to visit the Himmler Circle that was just as much my business as if somebody else had joined a golf club.

Q I interrupted you when you mentioned the name Koppler. Let us go back to your connections with the Gauleiter of Hesse, in Frankfurt, Sprenger. After returning from America did you not speak to him once?

A Yes, Gauleiter Sprenger and his deputy, Lindor, in January 1939 visited Grueneburg for the first time, which is significant of the favor enjoyed by Farben in the eyes of the Gauleiter. On this occasion I was sitting on the Gauleiter's right and his deputy was sitting on my right. Since I had just returned from a trip to America, the conversation, of course, came around to America, and I took the opportunity to tell the Gauleiter and his deputy that feeling in the U.S. against Germany was disagreeable and almost frightening. Especially since November 1938 — that is a few months before — the burning of Jewish houses and synagogues by the SA had been carried out through out Germany.

Q Did Gauleiter Sprenger not attempt, at one time, to have a certain

man put on the Vorstand of Farben? I am thinking of after the death of Ministerialrat Buhl.

A Yes, when Mr. Buhl, who was a member of the Vorstand, was killed in an accident, his titular director Stein, who was very close to the Party, wanted to become his successor and the Gauleiter did try very hard to support Mr. Stein's candidacy. He did not, however, consider him suitable and did not make him a member of the Vorstand.

Q You said that the Gauleiter visited Gruenoburg.

A Yes.

Q I believe that this is not clear to the Tribunal because the term Gruenoburg means nothing to the gentlemen. Would you please explain it?

A That was the big administrative building of I.G. Farben Industry in Frankfurt on Main.

Q And what is there today?

A I believe that is where the American administration authorities are housed today.

Q We heard earlier from Dr. Krauch on the witness stand that Gauleiter Sprenger, some years later, was against you. Do you know anything more about that?

A Yes, Dr. Krauch told me about that. This is what he told me. In 1942 Gauleiter Sprenger asked among other things that I be removed from my position because I was allegedly not reliable politically.

Q Regarding Dr. Tor Meer's relationships to the Party I have no further questions. But all of his statements can be supported by affidavits in the first document book which I should like to offer now before the end of this session.

On page 2, Document Book 1, you will find an affidavit by Dr. Ter Meer's of May 1947, describing his connections with the Party, his attitude when he heard of the invasion of Austria, Czechoslovakia, the outbreak of the war, etc.

I ask that this document No. 7 be accepted as Exhibit No. 9, and I believe it will not be necessary to go into details since Dr. Ter Meer has already discussed these things.

THE PRESIDENT: Pardon me, Dr. Berndt. We understood from the translation you said "Document 7." We take it you mean Document 2 is to be Exhibit 9?

DR. BERNDT: Nine; excuse me. Document 2, Exhibit 9.

Would you kindly look at page 47? There will be found Document No. 14 which I should like to offer as Exhibit No. 10. It is an affidavit of the head of the TEA office, Mr. Peter Lacheth, who for over twenty years was in constant contact with Dr. Ter Meer. On page 47, he says that Dr. Ter Meer was definitely opposed to National Socialism, and particularly after the Jewish pogroms of November, 1938, he voiced his disapproval in no uncertain terms. He goes on to say that Dr. Ter Meer was conspicuous by his absence from all Party meetings, and often disappeared before the meeting began. And if he had to go somewhere where he had to wear the Party insignia, he "borrowed" some employee from the TEA Office to go in his place.

We also hear that there no picture of Hitler adorned Ter Meer's office, and that he was violently opposed to intervention of the Party and State in matters connected with industry and the private lives of people.

On page 49 we find a statement by the Nobel Prize winner Professor Hahn. I may point out that in Professor Hoerlein's examination we had two affidavits: one from Geheimrat Weiland and one from Professors Windaus and Hahn, where these two men describe the attitude of leading Farben men with regard to the independence of research. Here, in Document No. 15, which will be Exhibit No. 11, Professor Hahn says that Dr. Ter Meer was Chairman of the Emil Fischer Society, the main purpose of which was to finance the Kaiser

Wilhelm Institute for Chemistry. Most of the sum of 200,000 marks was contributed by Farben, and that the Institute was completely free in its work. Farben never gave any assignments, especially no assignments which had an important bearing on the war effort. After the splitting of uranium Dr. Ter Meer or other members of Farben never influenced Professor Hahn's work by directing it towards war tasks. Then, on page 50, he says that Dr. Ter Meer and Professor Hoerlein intervened to see to it that Professor Hattauch did not have to give up his apartment to an old Nazi.

Page 58 — there is a document by Fintelmann, which I should like to offer as Exhibit 12, Document No. 18. No, I beg your pardon. I made a mistake. This Fintelmann document refers primarily to events in Italy. I will introduce that later. I take that back.

On page 63 there is an exhibit from Dr. Schnell. Dr. Schnell was in the TDA Office in Frankfurt. He tells about in a meeting at Grunenburg, for the purpose of listening to a broadcast. This was in the same building which housed the administration of Farben. It was a community listening to a big foreign-political speech made by Hitler on the radio in which he attacked Roosevelt's intervention in European politics.

He says: "During this meeting I observed Dr. Ter Meer repeatedly. His attitude and expressions of his face unmistakably betrayed icy disapproval. At one passage in the speech which met with particularly strong applause from numerous listeners, Dr. Ter Meer made a distinctly noticeable motion of his head expressing indignation."

The witness remembered this so well that he can tell us about it today many years later.

On page 65 I offer Document 20 as Exhibit 13. This is the statement of the Protestant community in Uerdingen which says that Dr. Ter Meer is a man of faultless character, deeply rooted in the Christian faith. He did not forget his home of Uerdingen, even after he had moved away. He

helped the congregation. They hope that this statement, which is on pages 55 and 56, will prove a blessing to him.

On page 67 we find Document 21 which I offer as Exhibit 14, by Pastor Moser of Kronberg, Dr. Ter Meer's residence, from which we see that he always fulfilled his obligations toward the church and never had any political activity in Kronberg.

On page 68 you will find a statement by Ludwig Boedicker, Document 22, Exhibit 15. Boedicker was the Deputy Ortsgruppenleiter. He says that Dr. Ter Meer had no office in the Ortsgruppe; never was active in politics, and never attended any Party meetings.

On page 69, there is an affidavit of Dr. Kiep, Document No. 23, Exhibit 16. Here again we see that Dr. Ter Meer took no active part in politics and often spoke in a derogatory way about Party favoritism.

Since Dr. Ter Meer was in Frankfurt during the day, Document 24 which I offer as Exhibit 17, is of value. Here Dr. Struss, the director of the TNA, confirms that in Frankfurt, too, Dr. Ter Meer never took an active part in politics, in a National-Socialist sense.

On page 72 we find Document 25, Exhibit 18. There the gardener of Dr. Ter Meer, who worked for him in Kronberg from 1936 on, says that the swastika flag was never flown from Dr. Ter Meer's house, not even on big national holidays, and that Dr. Ter Meer never urged his private employees to join the Party. That the house in Kronberg means you will see from the fact that today American generals have taken it over as a club. On page 73 we find a statement by a mailman named Heyruss, No. 26, Exhibit No. 19. He was once present when there was a collection being made for the Party donations from Mrs. Ter Meer, and the postmaster Heyruss, who was collecting the money, said that the donation was too little, and there was a violent argument with Mrs. Ter Meer about it.

THE PRESIDENT: Dr. Berndt, you are going along so well that we are reluctant to interrupt you, but I think we had better recess for the day.

The Tribunal will now rise until nine-thirty tomorrow morning.

(The Tribunal adjourned until 0930 hours, 11 February 1948).

Official Transcript of Military Tribunal VI, in the
Matter of the United States of America against Karl
Krauch et al, defendants, sitting at Nurnberg, Germany,
on 11 February 1948, 0830, Justice Shabo, Presiding.

THE MARSHAL: Persons in the Courtroom will please find their seats.
The Honorable, the Judges of Military Tribunal VI, Military Tribunal VI
is now in session. God save the United States of America and this Honorable
Tribunal.

There will be order in the Court.

THE PRESIDENT: Make your report, Mr. Marshal.

THE MARSHAL: May it please your Honor, defendants Krauch, Schmitz,
Kraefliger and Lautenschlager are absent from the Courtroom.

THE PRESIDENT: The absent defendants have been excused on their
applications from attendance today. Any preliminary announcements from
the Prosecution?

MR. SPEECHER: Mr. President, yesterday Dr. Berndt stated that he
did not plan at this time to interrogate the defendant Ter Meer with
respect to the subjects under Count II. I thought it would only be
fair to Dr. Berndt and to the defendant Ter Meer to indicate at this
time the intention of the Prosecution to examine the defendant Ter Meer
concerning any subjects whatsoever that we feel are important, since he
is a party and since we feel we must exercise our right in that connection
when he is on the stand without reference to any contingent possibility that
he may return to the stand.

THE PRESIDENT: Do you have anything to say, Dr. Berndt?

DR. BERNDT: Dr. Berndt. Yesterday I gave the reasons why I intended
to examine Dr. Ter Meer later on Count II. One reason is that the books
of the defendant von Schnitzler are not yet ready. These books
contain many comments referring to the East and to France. Without these
books I do not believe that I can examine Dr. Ter Meer thoroughly on this
point. In order to avoid repetition, to avoid confusion, I planned to
examine Dr. Ter Meer only after the material on Count II has been
offered. Also material that has been promised me has not yet reached me

because the gentleman in question was away.

THE PRESIDENT: I think the Tribunal indicated that it would permit you to do that in view of the circumstances when the matter was mentioned yesterday. The Tribunal would much prefer, of course, that when a witness goes on the stand the party offering him, be he a witness proper or defendant, should complete the examination and that co-counsel for the defense should complete their examination and that the Prosecution would complete its cross examination all at one time. That would be much preferable. However, we realize that we are all laboring under some difficulties with reference to the processing of documents and we are not disposed to handicap any defendant because of circumstances that are beyond control on his part or on the part of the Tribunal. However, what you have said, Dr. Bernat, is hardly an answer to what the Prosecution has indicated and that is, as we understand, that he is stating that so far as it is concerned it proposes to cross examine the defendant for all purposes or to examine him as you may say for all purposes while he is on the stand. That, we take it, is within the rights of the Prosecution. The only difficulty we see is this; if the Prosecution does do that and then we grant you permission as we are disposed to do, to use Dr. Bernat later after your documentary material is available, it may result in another cross examination on the part of the Prosecution or another examination on the part of the Prosecution. That's the reason why the Tribunal would very much prefer that the whole case be made out so far as a witness is concerned or a defendant is concerned who is on the stand but unfortunately we are not in a position to come with that because of the document situation. It seems to the Chair that the Prosecution is within its rights since this is a defendant, in interrogating him in any field it sees fit and we can well appreciate your situation with reference to the postponing a part of your examination in Chief because of the lack of books. Just a moment. I have stated the views of the Tribunal on the subject and it doesn't call for any further comment at this time. Are

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there any other announcements to be made before Dr. Berndt proceeds with
the examination of the defendant? From the defense or the Prosecution?
If not I should like to afford Judge Merrill, who is having such difficulty
in getting your books delivered an opportunity to say something to you.

JUDGE MARRELL: Better co-operation from the defense counsel is required if document books are going to be available at the time needed. The schedule of time submitted by defense counsel for delivery of the books in the Defense Center is not being followed. As a result sufficient time is not given for the processing of the great number of books being submitted by the Defense Counsel. An even more serious problem is presented by the failure of the defense counsel to turn their books in for processing in the order needed. For instance, there were eleven ter Meer books delivered to the Defense Center within a period of five days. However, it was later indicated to me on Monday of this week that counsel for the defendant ter Meer wanted Book 3 with Book 1 before beginning the presentation of the evidence and after books 1, 2 and 3 books 10 and 11 were wanted. It can be readily seen when books 10 and 11 are wanted before Books 4 to 9 it is not reasonable to expect Books 10 and 11 will be available unless special arrangements are made for processing these books out of order. Upon receiving this information I immediately passed it on to the Defense Center on Monday. Even so, those books cannot be completed until sometime today. Book 10 will be probably delivered sometime late this morning. Book 11 later this afternoon. If the books are delivered and numbered in the order needed, they can be processed in that order without confusion and I believe, without delay. Now, the Ambros books were due on 9 February under the schedule as submitted. However, only 4 books have been delivered although I understand there will be at least 8 Ambros books, so that the Ambros books should be delivered as soon as possible so that the processing can begin. One more thing: will the defense counsel kindly deliver to me at my office, Room 609, a memorandum advising when the books have been delivered to the Defense Center and the total number books to be processed for his client? That information will be helpful in checking with the Defense Center and following the processing of the Defense document books. Schneider Books have all been received and we hope they will be available by the first of the week. They cannot be

made available unless there is much over-time over the week-end. Indications are they should be available by the time the defendant testimony's evidence is completed.

THE PRESIDENT: Permit me to supplement what Judge Merrell has just said by stating that the Language Division is under very great pressure at this immediate time due to the fact that three trials are approaching the end. That calls, as you gentlemen all know, for the processing of argumentative material and will require considerable time in translating and processing judgments. We think if we can have very thorough and considerate co-operation on the part of counsel in this case over a period of the next two or three or four weeks, that we will have our problems pretty well behind us so far as the mechanics are concerned and I hope that you gentlemen will keep in touch with Judge Merrell and follow the suggestions he has made so that we do not find ourselves too seriously handicapped by the lack of this documentary material.
Dr. Hoffmann.

DR. HOFFMANN: Dr. Hoffmann for Ambros. Mr. President, unfortunately I was a little late but I heard that the Ambros books were mentioned. May I tell Judge Merrell briefly that I am preparing my books on stencils and I am then sending the books into the defense center so that they can be mimeographed, then the copies that are run off I am sending through the defense center to the translation department. My books are ready but there is a stoppage in the mimeograph room regarding running off the German copies because other things have priority, especially the ter Meer and Schneider books. These things are far more urgent at the moment, so that I have actually finished my books but they are not yet on the list of Judge Merrell. They will appear on this list only when the copies have been run off and sent down for translation.

THE PRESIDENT: That, gentlemen, is all the more reason why it would be very helpful to us if you, either in person or by written memoranda, keep Judge Merrell informed as to the situation. If he doesn't know the facts he is not in the position to give you the support that

you are entitled to. So, if you do that it will help very much. Are there any other announcements? Then, if not, Dr. Berndt, you may proceed with your examination.

DR. BERNDT: Yesterday I concluded with the presentation of the Biffert Affidavit, Exhibit 19, Book I. I shall continue to offer documents in my Book No. I. Please look at page 74 where you will find an affidavit of Dr. Gustav Knepper in which he states that Dr. ter Meer was strict, but very just in dealing with his subordinates, and that in Germany's re-armament he saw a measure for self-defense and the strengthening of the national prestige, not, however, a means of preparing for aggressive war. He also talks about Dr. ter Meer's attitude in the Francolor question and in conclusion he speaks about Dr. ter Meer joining the party. These statements confirm the testimony of my client. I offer this affidavit of Dr. Knepper as Exhibit 20. On page 56 you will find a statement by Anna Leber which I offer as Exhibit 21. It confirms that ter Meer was sharply opposed to many party measures, that he combatted Economic Party measures in Germany and at certain times expressed himself unreservedly against the party. This Miss Leber later went to Italy where she met Dr. ter Meer again and found in him the same old attitude of opposition to the party. On page 82 you will find a statement by Dr. Ernst Roehringer which I offer as Exhibit 22. At the end he says that ter Meer joined the party when he was urged to do so, that he did not hold with the Nazi racial theories and that he never made any secret of his attitude. Dr. Roehringer is a manufacturer and owner of a chemical factory. Therefore, his statement is no doubt of some significance. That appears on the first page and he considered Dr. ter Meer a representative of private family industry and above all he emphasized that Dr. ter Meer always had a fair attitude toward middle sized industry and that he was always opposed to tactics of violence. On page 83 we find the affidavit of Dr. Spangenberg which we offer as Exhibit 23 and I should like to emphasize only the last paragraph where Dr. Spangenberg says that in 1942 in the Verdinger Railway Car Factory

there was a position in the Vorstand to be occupied and that Dr. ter Meer refused to appoint a party member as a member of the Vorstand whereas non-party members came into the Vorstand including one who was recognized as a Socialist. Then please look at Page 58 where we find a statement by a chemist named Ringieb. I would like to offer this as Exhibit 24. He reports an interesting incident. In the winter of 1940 to 1941 a discussion took place in the Army Ordnance Office where representatives of various central offices of the High Command and industry were present.

THE PRESIDENT: Dr. Bernit, you are now referring to Document 33 for the record?

DR. BERNDT: Yes.

THE PRESIDENT: Did you intend to pass it for the time being?

DR. BERNDT: Yes.

THE PRESIDENT: Very well.

DR. BERNDT: It says that Ministerial Director Zahn made very high demands of industry so that those present were surprised at the extent of the demands. The last one of the members to speak was Dr. Meer who said even if it were possible to realize the army's program, please keep it constantly before your eyes that it will be easily possible for the United States to produce ten times the quantity of all of the products here mentioned and one day to throw this economic overweight into the scales, and that was interpreted as a sign that he was not much in favor of the war. Then I would like you to look on page 119 where we find a statement of Dr. Hoeller. This is Document 40. It will be Exhibit No. 25. I intended to emphasize only one thing here: this is on page 120, under No. 2. After the outrages against the Jews on 8 and 9 November 1938 a meeting took place in the Farben administrative building. After that the gentlemen ate lunch. About 20 men were present in the dining-room. Dr. ter Meer declared very excitedly: "I cannot understand how anybody can find a single word to excuse these occurrences. It was a crime. The fellows have let the rats loose. No

government can do such a thing without taking the consequences."

Now, look at page 37. This is the Document of Dr. Loehr, No. 12. I will call this Exhibit No. 26. Dr. Loehr has known my client for 25 years. That is, he knows him rather well. In 1929 he was sent to the United States by Dr. ter Meer. He came back in 1930 and was assigned to Dr. ter Meer on matters connection with America. This is important for us when we consider Runa. He later became Deputy Chief of the T&A office. He accompanied Dr. ter Meer on many business trips and was a witness at many business meetings. He described ter Meer as very objective and a man who was never one-sided in his judgment.

On page 39 he said that Dr. Ter Meer was very fair and that people often asked him for his opinion on difficult questions. At the same time he showed a warm understanding and sympathy for the needs of his fellow human beings whom he frequently helped effectively without making any bones of it. Dr. Loser then goes on to say that Dr. Ter Meer was against the Party; that he made a point of staying away from Party meetings and that he criticized the Party. At the end he cites several incidents when Dr. Ter Meer helped people who were persecuted by the Party. We find here something that he did to help a Jew, Dr. Hey. We shall hear that name later. In 1933, two years after Hitler came to power, in spite of all opposition, he advocated him as chairman of one of the most important technical commissions of Farben. Then, when there were difficulties, he sent him to East Asia for study. Later, he sent him to England and Dr. Ter Meer personally saw to it that Dr. Hey was paid in English currency.

On page 40, under #3, it is stated that Dr. Ter Meer in 1936 helped Dr. Naviaski. He saw to it that Dr. Naviaski received a position in the United States, that his leaving Germany was approved, and that he was able to take his property with him to America. Dr. Naviaski is now the chief chemist of the dye stuffs Department of the General Aniline in America.

The chemist, Dr. Richter, works for the same firm. He was married to a Jewish wife and had to emigrate for that reason and Dr. Ter Meer helped him to get his position too.

In the same year, 1937, Dr. Ter Meer helped Professor Witzinger of Bonn who went to America first, later to Switzerland. Today he is a professor at the University of Basle. It says here Zurich but he is in Basle now.

#5 mentions Dr. Robert Berliner who left Germany in 1939, worked for Trafford Chemical in England, and now has an important position in Leverkusen.

On page 43 we find an affidavit of Dr. Struss which will be Exhibit

#27. We all know Dr. Struss as a witness here. Therefore, I believe I may be brief in explaining this affidavit. I should merely like to emphasize that this man, who worked with Dr. Ter Meer for many years, confirms that Dr. Ter Meer did not take any active part in Party affairs; that he was active only where he was not able to avoid it. For example, in the creation of a synthetic institute in Frankfurt. In 1938, Dr. Ter Meer and Dr. Struss were in Hanover on a trip when the Jewish pogrom took place. Dr. Struss describes quite frankly that after his return to Frankfurt he said to Dr. Ter Meer in the office that it was probably not so bad after all, and then Dr. Struss says: "Whereupon Dr. Ter Meer jumped up, as he so often did on important occasions, and pacing up and down, delivered a lengthy lecture on the events taking place in Germany - events which he spoke of as grave, dreadful from the human point of view, and the political consequences which were incalculable."

THE PRESIDENT: Dr. Berndt, the Tribunal is of the opinion that in view of the character of the documents contained in your Book 1 you could shorten your presentation of these documents very considerably without any inconvenience to the Tribunal or to your client. These documents are all more or less of the same character. We have to read them anyway, and just in the interest of time may we suggest to you that in most instances a bare identification of the document would be sufficient. We're not imposing any iron clad rule upon you that you should not comment on them, but they're not of a type that requires very much comment because, after all, one can sit down and in a comparatively short time, digest the contents of the whole book. We offer that suggestion in the interest of your time and ours and if you can shorten your presentation of the remaining documents in this book I think you may do it with absolute safety to your responsibilities as counsel in this case.

DR. BERNDT: I will be glad to consider that, Mr. President.

Page 34, there's a statement by a Mrs. Finkelstein which I offer as #28. She tells about how Dr. Ter Meer helped her husband who was a

Jew.

On page 123 we find a statement by Richard von Szilvonyi which I offer as Exhibit 29. It explains Dr. Ter Meer's relationship with the Jewish father-in-law of von Szilvonyi, Dr. Karl von Weinberg, who has been mentioned before.

In the preceding document, which is on page 122, you will find an affidavit by Dr. Mertens. This I offer as Exhibit 30. This states that the Vorstand of Farben helped the two Weinberg brothers, Karl and Arthur, especially by making available to them funds in Switzerland.

With the exception of a few documents which refer to other questions I have completed offering the affidavits in Book 1.

I shall continue in the examination of Dr. Ter Meer. I shall now explain briefly the activity of Dr. Ter Meer outside of Farben.

May I ask whether the Tribunal has received the supplement to Book 1?

THE PRESIDENT: We have not, Dr. Berndt.

DR. BERNDT:

Then I should like to mark these three affidavits for identification.

Q Dr. Ter Meer, would you please tell us about your appointment as Wehrwirtschaftsfuehrer?

A At a very late time, as far as I recall it was not until 1943, I became Wehrwirtschaftsfuehrer. The appointment was made by the Chamber of Commerce of Frankfurt/Main or by the Reich Ministry of Economics. I did not consider this matter particularly important because at that time the institution of Wehrwirtschaftsfuehrer no longer had any actual significance which it was at one time supposed to have had. It was purely a decoration.

DR. BERNDT: I should like to offer Document 45, a statement by the former manager of the industrial department of the Chamber of Industry and Commerce in Frankfurt. The Tribunal does not have it yet, so I shall offer it merely for identification and mark it as Exhibit vl. The statement which my client has just made is confirmed in this

affidavit.

THE PRESIDENT: Dr. Berndt, is that one of the documents that will be a supplement to your Book 1?

DR. BERNDT: Yes.

THE PRESIDENT: Thank you.

BY DR. BERNDT:

Q. Later you obtained a position in Italy where you went on the 15th of September 1943?

A. Yes.

Q. Would you please explain that briefly?

A. In September 1943, on very short notice, the Spear Ministry assigned me to join a group of industrialists who, under the direction of General Leyers, the Plenipotentiary General for the Armaments Ministry in Italy, were to be used to revive Northern Italian industry which had been broken down completely as a result of the lack of coal and the breakdown of transportation. I was not able to evade this request especially since it was originally said that this would require only a few weeks. But my first stay in Italy was, I believe, about nine or ten weeks. Military developments in Southern Italy were quite different from what had been expected and it was considered that the reactivation of Northern Italian industry would last some time and the industrialists from the various groups were to be kept there longer. That included myself for the chemical industry. Consequently, I continued my activity in Italy and I remained there until the end of the war.

Q. Regarding Dr. Ter Meer's activity in Italy I shall come back to that when I deal with Count Two.

Dr. Ter Meer, were you, and from when on, a member of the Economic Group Chemistry?

A. Yes. I was a member of the Presidium of the Economic Group Chemistry from 1942 on. The Economic Group Chemical Industry was reorganized in 1941 because, as an organ of the Armaments Ministry, it had a greater part in the direction of the production of German chemical industry. A committee was appointed in the summer of 1941 for this reorganization, and I was a member of this committee. Several men of this committee were, in 1942, appointed to the new Presidium of the Economic Group. Mr. Schlosser of the Deutsche Gold und Silber Scheideanstalt became chairman and I became his deputy. In addition to this board, there was a technical board, and the chairman of this was a Mr. Doerr and I was his deputy. There was never any great amount of practical work for me since, for obvious reasons, we had a great deal to do with organizational questions in the beginning, especially the establishment of new sub-groups, technical groups, etc., and then, in September 1943, I was sent to Italy. From that time on I was not able to have anything more to do with the Economic Group.

Q. In connection with this statement I should like to offer Document No. 17 in Book 1, page 55, as Exhibit 32. It is an affidavit of Hermann Schlosser, the President of the Economic Group Chemical Industry, confirming the statement Dr. Ter Meer has just made.

Dr. Ter Meer, do you recall that Dr. Ehrmann gave us an exhibit asserting, among other things, that your position in the Economic Group was exploited in favor of

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Fardon? Do you recall that?

A. Yes. I remember this affidavit by a Mr. Ehrmann who, as far as I know, was the deputy of Dr. Ungewitter. Mr. Ehrmann, however, was here as a witness, and corrected his affidavit before he was examined and he corrected the charges, I may say, that he made against me.

Q. That is correct. I refer to Exhibit 499 in the English Book 24, page 13, and in the German Book 22, page 44, and the correction which has just been mentioned was made when the witness Ehrmann was questioned by Mr. Sprecher on the 7th of October 1947.

I have one more question about the Economic Group. Did this group have anything to do with labor questions?

A. There was a department in the Economic Group which dealt with labor questions. I had very little to do with this department but I know that the head of the department occasionally attended meetings at the Presidium. The essential point was that the Economic Group Chemical Industry was the agency which, upon request from important firms, issued priorities for the recruiting of labor. The firms could go to the local labor office and apply for this labor. Other questions were discussed. For example, when the air raids increased in Germany in 1943, the various industries set up a mobile column of workers which could be quickly sent for repairs to any particular plant that might have been damaged. Later, when I was in Italy, I know that the Economic Group sent some people to Italy to recruit Italian labor for work in Germany.

Q. I believe that will be sufficient.

I shall come back to this question later.

Were you in any professional group?

A. Yes. In 1939 I became head of the Chemical Industry professional organization. This sort of organization means in Germany an official semi-private industrial organization which secures employees and laborers against accidents and industrial diseases.

Q. I offer from Book 1, Page 52, the affidavit of Dr. Martius, No. 16 as Exhibit 33. I refer to this without explanation.

Doctor, we had a Chamber of Commerce in Frankfurt. Were you a member of it?

A. At some time before 1939, I don't know the year exactly, I became a member of the Advisory Council, the Beirat, of the Chamber of Commerce.

Q. And what did you do there?

A. It was purely nominal. It was a big council of many members. Sometimes general economic questions of local interest for the firms were discussed.

Q. There was a Haus der Technik in the Wachsenhausen. Could you please tell us about that?

A. Yes. About 1941 or 1942 this building was set up in Frankfurt. It was on the model of the first big Haus der Technik in Essen, that is on the Ruhr, where economic meetings, lectures, etc. were held for the members. It was apparently then the intention of setting up such houses in many industrial cities in Germany and on the day when the one in Frankfurt was established - incidentally, it was all merely on paper, it was never actually in existence - I held a lecture on the technology and application of rubber.

Q. Do you know the Emil Fischer Society?

A. Yes. The Emil Fischer Society was founded by industry to finance the Kaiser Wilhelm Institute for

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Chemistry. Mr. Arthur von Weinberg was the president of this society until about 1937 or 1938. Mr. Weinberg could no longer remain in this position and asked me to be his successor which I did.

Q. What was the purpose of this society?

A. It was to obtain funds for the Kaiser Wilhelm Institute for Chemistry in Berlin and the main duty of the president was to see to it that the members paid high dues or to obtain new members.

Q. And now you just mentioned the Kaiser Wilhelm Institute. Did you have any connection with that?

A. Only insofar as I had to see to the financing of it and with the head of the Kaiser Wilhelm Institute for Chemistry, Professor Bahr, I discussed this matter or corresponded with him about it. For example, if he needed certain funds to obtain new apparatus, he inquired of me: "Do we have enough money?" Otherwise, I actually had nothing to do with the Institute. It was under the management of its director.

Q. You seem to have been approached frequently for financing. You were on the committee of the Justus Liebig Society?

A. Yes. The Justus Liebig Society was also created by industry which contributed funds to help young students who had passed their examination to allow them to stay as assistants at the university and thus to increase the quality of the young men.

Q. I believe that is sufficient.

Now, you were also Treasurer of the Chemical Group in the National Socialist League of German Technical Men?

A. Yes.

Q. Did you have any work there?

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A. I believe I said yesterday that as a member of the Society of German Chemists I automatically become a member of the National Socialist League of German Technical Men. In 1942, I believe it was, some gentleman in this League thought of reorganizing the matter and setting up a specialized group for chemistry in the National Socialist League of German Technical Men. Now, this included the Society of German Chemists, the German Chemical Society, and other organizations. A board was set up and on this board I was given the role of Treasurer. This office, however, had no practical effect because collections for such purposes were forbidden in Germany at that time.

Q. In this connection I may point out or I may refer you to the testimony of Schiesser of the 14th of January this year in the afternoon confirming that Dr. Ter Meer's position as Treasurer had no significance whatever.

W. We have now finished this subject. We now come to more interesting questions. Your position and your work within Farben. In order to understand this one must very briefly describe the development of Farben and the more important bodies within Farben. Therefore, I ask you for a brief description of the reasons why, in 1915, the community of interest of German aniline dye stuffs factories was created?

A. The reasons were the following: In 1916 it became clear in Germany that a change in the position of the German dyestuffs factories in the World would take place. Through the outbreak of the war the fatal consequence had developed in many countries that the textile industry was practically without dyestuffs, because up to 1914 the German dyestuff factories supplied about 85 per cent of the World consumption. This drastic phenomenon caused great dissatisfaction and the chemical industries in England, America and other countries threw themselves with great intensity into the production of dyestuffs. Mr. Duisberg foresaw that no matter how the war ended the pre-eminent production of German dyestuff industry in the World would be over, and that was the reason for the community of industry in 1916.

Q. Did it later happen as Mr. Duisberg had foreseen?

A. Yes, much worse.

Q. Please describe that?

A. As a result of losing the war German small dyestuff factories lost their branches in Germany, France and Russia, and also a small one in America too. They lost their sales organizations abroad, their patents and their trade-marks were confiscated. Their factories lying on the Rhine were occupied. Chemists in the uniform of occupation officers investigated and discovered our processes. Highly graded dyestuffs, which our new competition abroad not produce, had to be delivered by way of reparations.

Q. Now, what happened in 1925?

A. Foreign competition in the dyestuffs field, the field which was, I might say decisive for Farben at that time, about the middle of the 20's became more and more noticeable. The countries which had assumed dyestuffs production had imposed high tariffs and in part had forbidden imports altogether. The so-called license system in England. It became quite clear to us that the German dyestuff factories would never get back to full production. It was a matter of course that we had to

undertake decisive simplification in production and in sales, because up to now we had been producing in all our factories and every individual firm of the community of interests had its own sales organization in practically all the countries in the world. That was very costly. Now however, the contact between the firms was nothing more than a contract. It had been concluded for a very long time, but could be abrogated for any important reason. For this reason no one wanted to stop production or give up a sales organization abroad. The only solution was a merger. That was the reason.

Q. How many firms were included in this merger?

A. Actually eight, but two of these eight remained outside of the I.G. Farben Industry, Casella and Kalle. Kalle remained an independent firm and Casella later was dissolved and incorporated elsewhere.

Q. Can you give the names of the firms involved in the merger?

A. Badische Anilin und Sodafabrik, Ludwigshafen, Hoechst Farbwerke, at Hoechst, Leverkusen Farbstoffe at Bayer, Aktiengesellschaft für Anilin-Fabrikation, in Berlin, Grignol Elektrochemische Factory and the Chemical Factories formerly Adler-Tier-Moor.

Q. When these eight firms now formed a merger did the heads of these firms have the intention of obtaining a dominating position in the chemical industry?

A. No, I have already told you that the reason was the creation of a community of interest, and the merger here was purely defensive.

Q. Did anyone ever have the idea that this merger might be expanded to domination outside of Germany, to effect the world domination of the chemical industry?

A. No. Such an intention never existed. Such an intention could be expressed only by a layman who does not know the construction of the chemical industry. As was the case before 1914, in a high grade special subject as dyestuffs one man can hold a dominant position, but for the

overwhelming part of other chemical production that is quite out of the question. Since the beginning of the 19th Century when chemistry began and since the middle of the 19th Century when it developed more strongly, all industrial countries in the world have always produced their own heavy chemicals locally for the reason that these products, which are cheap, cannot bear expensive transport, therefore in all industrial countries we have chemical industry on an independent basis which produces acids, alkali, phosphates, etc. Also all industrial countries in the world dispose of their own production in such sectors as soap, fats, paints, lacquer, artificial silk, finished production of rubber, and many other things. In Germany too, Farben, although it did hold a pre-eminent position for the reason just described, had only a part of about 35 to 40 per cent in the total production, for in Germany too all these other branches of the chemical industry were scattered regionally throughout the country. The figure of 35 to 40 per cent. is given by Dr. Ungewitter about the middle of the 30's. Dr. Ungewitter was the manager of the Economic Group of the chemical industry.

Q. When these chemical factories merged there was an enormous number of Vorstand members who sat together; now, what happened with all of these men who had formerly been on the Vorstand of the Companies which were merged; what happened to them?

A. All the members of the firms which had previously been independent were taken over after the merger, and also all the Aufsichtsrat members. There were therefore such too large boards, and therefore there was a limitation of the Vorstand members who were really voting, and that was the so-called "Working Committee." It consisted of 26 members, if I am not mistaken.

Q. And how did the Vorstand develop?

A. Up to about 1938 when the new corporation law was introduced in Germany the number of Vorstand members, who had been about 50 at the beginning, was reduced by death, retirement, - so that at the

beginning of 1938 there were 23, 24, 25 -- I am not exactly sure how many regular and deputy members of the Vorstand there were. At that time the distinction between regular and deputy members of the Vorstand was dissolved, and the remaining gentlemen formed the Vorstand from that time on.

Q. Can you tell me there, at what places these individual members of the Vorstand lived, did they all live in Frankfurt or were they scattered?

A. The Vorstand members were scattered throughout Germany since the technical Vorstand members were generally living near the factories and the other men too. There was a strong degree of decentralization. Mr. Schmitz did not live in Frankfurt, but in Berlin or Heidelberg. Mr. von Kolerin lived in Ludwigshafen, not in Frankfurt, and also various others were in other centers, Mr. Wilm in Leverkusen and Mr. Otto in Berlin, etc.

Q. Is it approximately right if I say that 27 Vorstand members lived in eleven different towns in Germany?

A. Yes.

Q. In Bitterfeld, Wolfen, Hild, Frankfurt, Heidelberg, Heilbronn, Cologne, Leipzig, Leverkusen, Ludwigshafen and Merseburg. 27 men in eleven different towns?

A. Yes.

Q. Now, since the Vorstand members were so numerous and lived so far apart, how were meetings held?

A. The meetings were held at Frankfurt.

Q. About how often?

A. Seven or 8 times a year, I should say.

Q. Did the Vorstand members who lived in different places see each other very often; did they meet very often?

A. That varied, of course. First of all we had a number of commissions, there certain groups had meetings, the commercial commission,

many sub-commissions in the technical field, so of course we say each other now and then; but we actually met as a complete group only at the big meetings.

Q. Was this meeting of the various members of Vorstand interfered with in any way during the war by poor communications?

A. Yes, because of the difficult travelling conditions we were not able to meet so often during the war, and consequently from about 1942 on collaboration in the lower groups, commissions, etc., was reduced considerably. We were not able to continue our scientific work during the war as before either, with the many scientific commissions no longer meeting, and in the main meetings of the Vorstand the meetings were not quite so regular either.

Q. Would you please briefly describe a Vorstand meeting?

A. The meetings began at 9:30 in the morning lasted until lunch, about 1:30 or 2:00, and were only resumed in the afternoon in exceptional cases. The meetings usually began with a report by Dr. von Schnitzler.

Q. Who presided and opened the meeting?

A. The chairman, Mr. Schmitz. They usually began with a report by the chairman of the Commercial Committee, Mr. von Schnitzler about the meeting two days before of the Commercial Committee, then I reported about the meeting of the Technical Committee on the day before, and then there followed according to the agenda the other matters which the members of the Vorstand had brought up. In conclusion Mr. Schmitz usually reported what had been decided on the day before in the Central Committee, and for the record mentioned the donations decided upon the day before in the Central Committee.

Q. He will come back to the Central Committee in a moment; you just said the meeting was opened by Mr. Schmitz; what was Mr. Schmitz in the Vorstand?

A. Mr. Schmitz was chairman of the Vorstand. In German corporation law after 1938 there were two forms of management of a stock company. There was the form of a definite leader, who would have the decisive position, even in the case of a large Vorstand, and who alone made the decisions. In addition there was the form of German corporation law where there was a Board, where the chairman is the *Präses Inter Pares*, and usually has the decisive vote in the case of tie-vote. The first possibility was, I believe, very rare in Germany. At any rate it did not appear in large firms, and no use was made of this possibility in *Karben*.

Q. Was the vote of the chairman, Mr. Schmitz, decisive

in ²carbon in case of a tie-vote?

* Yes.

* You just said that you reported on the decisions of the TEA, and Dr. von Schnitzler about those of the Commercial Committee; about how long did von Schnitzler's report take?

* I believe one can say Dr. von Schnitzler's report usually took about an hour, in which he dealt with commercial matters which everyone present could understand. On the other hand my report was usually shorter. I believe I rarely spoke longer than 20 to 30 minutes, because in the TEA we dealt with special scientific and technical questions, which our commercial colleague would have difficulty in understanding.

? Were minutes kept of the Vorstand meetings?

* Yes. At the beginning of the next Vorstand meeting the minutes were read, and it was asked whether there were any objections.

? Were the minutes sent to the Vorstand members in writing?

* No.

? Not to those either who had been absent from the meeting?

* The men who had been absent from a meeting heard the minutes read at the next meeting.

? Were these minutes very detailed specifically, could one see from the minutes exactly what had been said, what reasons there had been for a certain decision?

* The minutes were, of course, not stenographic notes of the proceedings. Usually the recording secretary had the reports given to him by the various men concerned, and prepared an excerpt from them. It was not always easy for the secretary to tell what the most important points were in

a long report. Very often the man giving the report gave a brief summary of it to the secretary. I regularly prepared an excerpt from my reports on the TEA meeting.

Q Now, what did the individual members of the Vorstand know about events in the Vorstand as a result of the Vorstand meetings, for instance did a Vorstand member in Leverkusen know exactly what was going on in Ludwigshafen or Hoechst, even if there had been a brief report on the meeting in the Vorstand meeting?

A In my opinion one can say that at best the Vorstand members had a general view of the over-all course of business. In view of the enormous amount of business it was quite impossible in a Vorstand meeting which lasted only a few hours to go into too many details. Besides the meeting of the Vorstand was generally limited to certain especially important matters, and generally there was no vote, but the matters required a decision or comment by the Vorstand. The matters which required the approval of the Vorstand are clearly recorded in the Charter. Never, of course, could a commercial man, let us say, have an exact insight into technical matters, by attending a Vorstand meeting, concerning a specific happening in the plant, and never could a technical man have any special insight into commercial matters which had happened in South America from these reports, unless there was a special report on a specific incident.

Q Then the consequence would be that the individual Vorstand members within their department, if I may say so, had a certain degree of independence?

A Yes, that was the case to a high degree. The individual man had a very high degree of independence in their own field. I once used the expression "The Vorstand

of Farben was composed of a number of director generals." By director generals in Germany we mean the head of an independent company. Each one of these men was in charge of a big plant like Leverkusen or Ludwigshafen, and was in effect definitely a director. The same was true of the head of the sales companies. For each sales organization, whether dyestuffs or chemicals, was an enormous machine with an enormous number of directors in Germany and abroad. These men too were men with very high positions and a high degree of responsibility, and it is clear that men who had such large responsibilities could report only a certain extract of their work to the Vorstand.

Q Now, to put a practical question, could you put confidence in your colleagues in another plant in assuming that these colleagues could do their work properly?

A One could not become a Vorstand member of I.G. Farben very easily. If you will look at the list of Vorstand members of Farben you could see, I believe, without exception, but I don't want to commit myself on that point, but you will see that these are men who advanced in our own firm. The men who were later appointed to the Vorstand were persons whom we had known --

Q Just a moment, Doctor, I just heard that an important sentence was not translated, "that in the Vorstand of Farben there were only men who had been working for Farben for years," is that right?

A Yes.

Q And since we know these men, since we had worked with them for years there was, of course, a high degree of confidence in the work and the character of colleagues, and if that had not been the case cooperation would have been

impossible.

Q. You have been in the Vorstand of Farben for a long time?

A. Yes, since 1925.

THE PRESIDENT: "We will recess at this time.

(Thereupon a short recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Dr. Berndt, the Tribunal is just now handing down to the Secretary the order about which you talked to me yesterday in chambers, for your information. You will get it in due course. You may go ahead.

BY DR. BERNDT:

Q Dr. For Meer, at the end of our discussion, we talked about the independence which each individual Vorstand member had in the Vorstand Board of Farben, and I asked you whether you could place your complete trust in other gentlemen which was needed and whether all the other gentlemen had to ask themselves whether they could place confidence in you. Upon what was this confidence based?

A This confidence was based on the fact that the Vorstand members had been chosen from among persons who had been active in I.G. Farben, who had grown up in I.G. Farben, who had been trained there, and whom we knew personally from collaboration in committees and sub-committees, and in whose case we knew, besides their commercial and technical ability, what exactly their character was. Only such persons could expect to get into the Vorstand. And for that reason we were able to place trust in them -- far reaching trust -- that they would carry out everything correctly down to the last detail of their work.

Q Did it ever happen during I.G. Farben's history that this confidence, this mutual trust, was abused?

A In 1928 or 1929 one or two cases arose when gentlemen had to be removed from the Vorstand.

Q In these two cases you took ruthless steps to correct things?

A Yes.

Q Is there any other case that happened where the incompetency or lack of suitability of a Vorstand member became evident?

A During latter years I don't know of any case.

Q During the period after 1933 were the Vorstand members permitted in all cases to report to other Vorstand members about their work and inform them quite clearly what they had to do?

A I should say that the restriction of reports to colleagues began approximately in 1936 when, in connection with rearmament, certain things in the military field became known to individual gentlemen which caused these gentlemen to be obligated to keep secrecy. The precaution offered a few of these obligation certificates, but at that time they were only valid for technical men.

Q To be specific about your person, did you receive knowledge of all technical matters in Berlin?

A No, from the period of time prescribed by me previously I too was not permitted to learn of certain things which were classified under the secrecy regulations of my colleagues, and, more than that, in my own Sparte too, I was not permitted to learn of everything.

Q We talked about the capability, if I may say that, of the Vorstand members, and of the fact that only after a strict choice were gentlemen called into the Vorstand. How about those persons subordinate to the Vorstand members -- Prokuristen, titular directors and so on?

A Also in those cases, in the interests of our business, we selected the best people, but since the number of so-called titular directors was very large, and since there were very many prokuristen, one could say that not all of them were able

to become members of the Vorstand.

Q I didn't even that. I merely wanted to know whether also in the selection of these people strict qualifications were required.

A Yes, of course strict yardsticks were applied, but they were not as restrictive as in the case of Vorstand members.

Q Were such gentlemen also provided with a certain amount of independence in your field also?

A Yes, that was true. When talking about the organization of the technical committee and its sub-divisions, the so-called commissions and so on, I shall point out this particular point. In Sparte 2 alone we already had more than 30 scientific and technical commissions. For the largest part they were presided over by directors or procurists and not members of the Vorstand, although members of the Vorstand participated frequently in the meetings. Also in the cases of these persons we had to see that they were capable men as far as knowledge and character was concerned.

Q The Central Committee was mentioned a short while ago. Can you please tell me when this committee was formed?

A The Central Committee was formed in 1929.

Q Wasn't it 1931?

A I can not fix the year exactly. I thought it was 1929. But that is not important. The Central Committee was founded at the time because the active members of the Vorstand at the time, the working committee, with its 26 members, appeared still somewhat too large to deal with a number of questions of personnel or questions that were of a confidential nature and could not be discussed in a large circle and should be discussed in smaller boards.

A. From the years of its foundation until 1935, when I was for three years a member, from 1933 to 1935, it was an extremely important leadership board for Farben, for as long as Geheimrat Bosch presided over the Central Committee technical matters and important commercial matters of a basic nature were discussed. The meetings of the Central Committee at the time took several hours, and I believe I am correct when I say that they were among the most interesting meetings that I ever attended in my life. They were presided over by Bosch, a very stubborn and excellent technical man; he has already been characterized as such. Mr. Duisberg was always present in his capacity as chairman of the Aufsichtsrat. Duisberg was the great organizer of Farben, a very impulsive and energetic personality.

These meetings of the Central Committee were very important and interesting. But during the following years this was changed fundamentally. Mr. Duisberg died —

Q. Nineteen thirty-five?

A. Yes, '35. Mr. Bosch became the chairman of the Aufsichtsrat. His sickness became more noticeable during the following years. Physical discomfort made it impossible for him to remain in the meetings. He did not appear frequently—or only for a short time in the meetings of the Central Committee. Mr. Schmitz, who presided over the Central Committee after 1935, is not personally adapted for such discussions, and therefore the contents of the meetings of the Central Committee became less and less. I believe from the second part of the Thirties on — '38 and '39 on—technical matters were no longer discussed at all, and finally we treated in the Central Committee only such questions which, so to speak, were the preliminary discussions for the Vorstand meeting on the next day. For example, the yearly balance sheet was discussed in the Central Committee, and was again discussed in detail, of course, in the Vorstand. The annual report of the firm was discussed in the Central Committee, and occasionally financial questions and questions of taxation were discussed, which Mr. Schmitz was interested in as chairman, in particular. But essentially the

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function of the Central Committee consisted, during the latter years of the war especially, when it was difficult to get together, only in the discussion of personnel questions. The Central Committee had to take charge of the appointment of titular directors and Prokurists and those persons authorized to conduct business, and the Vorstand was only informed of it. Besides that, the Central Committee also took care of appropriations, contributions. But also they were again reported to the Vorstand on the next day at the end of the agenda and put into the record.

Q. Did the chairman of the Central Committee, Schmitz, besides reporting to the Vorstand about the contributions, also report to the Vorstand about other things on the next day?

A. Yes: sometimes at the beginning or other times at the end he reported on events in the Central Committee and reported, for instance, on the appointment of Prokurists and directors. These were resolutions that the Central Committee made. The Vorstand could not express any opinion about that, but the other things discussed in the Central Committee were frequently again discussed in the Vorstand.

Q. But, if I understood you correctly, only generally, not in detail?

A. Yes, of course, only general policy.

Q. You just mentioned that the Central Committee also discussed contributions. May I go into this question briefly. Were these contributions and other fees that were paid to the Party after 1933 all discussed in detail in the Central Committee?

A. Principally, the contributions were to be discussed in the Central Committee, but in view of the large number of our plants and sales groups, a large number of local contributions of small sums had to be appropriated, and if a plant manager was approached to contribute one, or two, or three thousand marks it was not to be reconciled with his position as chairman of a large enterprise if he had to say: I first have to ask for permission. Come back in six or eight weeks.

As a result these people in charge of the local plant of the factory,

or who were in charge of work combines or sales combines, had the right on their own to grant contributions up to a certain amount without asking the Central Committee beforehand. They merely reported them to the office of the Central Committee where they were registered.

About these smaller, local contributions we did not discuss anything in the Central Committee. The Central Committee talked about the major contributions, for instance, the Adolf Hitler contributions, the Winter aid, the Red Cross, during the war, or other larger one-time contributions. They were not treated solely in the Central Committee, but other payments were also discussed which could not be classified under the term "contributions" in the political sense.

Professor Hoerlein has discussed that in detail, and I already touched upon the fact that the Justus Liebig scholarships and the Emil Fischer Association were assisted by us, and these contributions were also discussed in detail and appropriated there.

Q. You know that the Prosecution saw in the payment of these contributions a support granted to the Party. You referred to the description rendered by Professor Hoerlein. To be brief, altogether there were about forty million marks given to the Party. Professor Hoerlein had subtracted those funds which were of a social, charitable, or scientific nature and arrived at the end with 8.2. millions. He split it up for thirty plants of Farben over a period of twelve years, and then he figured out at the end that per year and per plant a sum of twenty-thousand marks applied, which is .4 per cent per million of the yearly turnover of Farben.

Do you agree with this opinion?

A. I heard Professor Hoerlein's explanations, and I consider his description to be absolutely correct.

Q. Then I can be brief and merely ask you with regard to a few particular contributions. Calculations have been submitted to the Prosecution about birthday presents to Goering. Before those presents were bought, did you know about them at all?

A. No, those Birthday presents for Goering were never discussed in the Central Committee.

Q. Not even in the Vorstand?

A. No.

Q. Did you subsequently learn of them?

A. I was not informed of them by a member of Farben but by an acquaintance who was also invited to the birthday parties and who told me that the presents of Farben were immoderate.

Q. It is pointed out to me that a misunderstanding might have arisen as though you, Dr. Tor Moor, had been invited to the birthday party.

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A. No, I did not have that honor.

Q. At one time a contribution of one hundred thousand marks was paid to the Sudeten German Free Corps, in September, 1938. Before this sum was paid did you know anything about it?

A. As far as I remember, from the documents of the Prosecution it can be seen Mr. Schmitt effected this payment and that the members of the Vorstand were informed of it subsequently by circular letter. I did not know of it previous to that.

Q. At a later time, in September of 1938, a contribution of five thousand marks was paid. Did the Vorstand or the Central Committee make any resolution about that?

A. As far as I know, this contribution was treated in the same way without previous report to the Central Committee and to the Vorstand.

Q. We also heard that on several occasions one hundred thousand Reichsmark were paid to the SS. Was anything discussed about this in the Vorstand or the Central Committee? Did they make a resolution to that effect?

A. No; never. Payment of these hundred thousand marks to the SS, I believe, as Christmas presents to Mr. Klinger, became known to me through a newspaper article that I saw in the press of Krensberg, probably in the summer of 1945. It was stated there in something about a correspondence between a Baron von Schroeder in Cologne on the one part and Mr. Schmitt and Mr. Zuckofisch on the other part, and it was said in this correspondence that these two gentlemen had given to Baron von Schroeder fifty thousand marks each, or, together, one hundred thousand marks. That was the first time that I heard about this at all.

Q. Was this in Krensberg?

A. Yes.

Q. What year?

A. I assure in 1945.

Q. This brings us to an important point, the Supreme Technical

Leadership of Farben. Would you please tell me where this was centered?

A. The supreme technical direction was, of course, completely decentralized. There were particular reasons for that. I spoke about the reasons which caused the merger of Farben. These reasons arose from necessity. But at the time in the leading spheres of Farben, and I know this especially with regard to Mr. Duisberg, since I had a lot of work in Leverkusen at the time, Mr. Duisberg was not very enthusiastic about creating one large enterprise since such large enterprises were very difficult to direct, and there is always the danger that a strong bureaucracy becomes noticeable and predominant. As a result, Duisberg emphasized especially his idea which he called "the decentralized centralization."

In the field of sales one had to centralize dyes in one large sales office, and pharmaceuticals in another, and so on. But in the case of the plants, under no circumstances did they want to go that far. One must take into account that these large plants, such as Ludwigshafen, Hoechst, and Leverkusen, were based on the history and tradition that goes back to the 1860's and that this history is the history of the chemical industry as well because of the significant achievements that were made in these plants. These plants up to 1929 had uninterruptedly made great achievements in scientific and technical fields, and it was not surprising that this organization was to be kept and maintained. The individual organization of the plants was to be kept in force, even after the merger had been instituted, was to be the nucleus that radiated power. One did not want to centralize anything and direct all the plants from one office.

As a result, the Veretend members of the new firms remained in their plants, and did so until the end of the war.

In order to be able to continue their part, the plants had to be kept in force universally and independently, that is to say, besides production that was their task, they also had to have their other machinery in their own plant, their reserve machinery, their patent departments, their local legal departments, the personnel departments, the purchasing departments

the calculation departments--and other departments belonging to an independent and well-rounded organism of the plant. That is what Luisberg termed "the decentralized centralization."

Q. Despite this well-emphasized independence of the individual plants, there must have been a technical supervisory leadership within the entire enterprise. How was this effected?

A. Coordination, of course, had to take place. One took the means that were obvious. The plants were scattered all over Germany. Near the largest plants there were for the most part a number of smaller or radii plants. One, therefore, consolidated locally the regional plants in the vicinity in so-called works combines, and the smaller plants were put under the supervision of the largest plant.

Furthermore, control boards were created, especially the Technical Committee. In the Central Committee there were all technical Vorstand members of the firm represented. As a further means of organization all the plants of Farben were divided into three districts, which was done in 1929.

Q. Do you want to deal in particular with the Technical Committee which is called the TKA in abbreviation. It was created when the merger took place?

A. Yes, the TKA was newly organized when the merger took place as a continuation of a previous institution called the FAKO, I believe -- the Fabrication Commission.

Q. But that is not important. Who were the members of this TKA?

A. At the beginning when there were many Vorstand members also in the Technical field, there were a limited number of leading technical men. Later, when the Vorstand had automatically become smaller, all Vorstand members of the technical field were members of the TKA, the Technical Committee.

Q. How many men of the Vorstand belonged to TKA at the same time? I am not so much interested in the number but the type of men.

A. As I said, all technical members of the Vorstand belonged to the TEA, that is, those people who were chemists, engineers, or pharmacists, or something like that. Besides that, I consider as members of the TEA also Mr. Schmitz, who in his capacity as chairman of the Vorstand, was also consulted in the TEA meetings. That had already been provided for in the old organization plan of the TEA, that the chairman of the Vorstand and Aufsichtsrat should participate in the TEA meetings. Besides that, we had a number of members in the TEA who were technical men but who were not in the Vorstand, and for the most part these were people whom we considered potential Vorstand members for the future and whom we wanted to train and whose horizon we wanted to enlarge by their participation in the TEA meetings. Finally, there were some guests. Frequently, in the earlier years, and less so during the later years, there were people from the commercial organizations, if there were any points on the agenda that were of especial interest to one of the sales heads. Only Mr. von Schmitzler participated regularly, but also only during the course of the first lecture that was given at the beginning of the TEA meeting. Mr. von Knierim participated from 1939 or 1940 on, upon my request, and he did so regularly because I wanted to have his report about the patent field and the question of payment of our technicians who had a certain right of participation because of their relationship of employment. I wanted to have his advice and he participated in discussions about this subject, and also because sometimes we discussed contracts of technical nature, patent contracts, and so on. But Mr. von Knierim did not participate in the entire meeting. He listened to the scientific report and then came back again when the technical contracts were discussed.

Q. I am told that when you described the position of Dr. von Knierim in the TEA there was a mistake in the translation. In order to clarify any error, would you please repeat what you said?

A. I said that we desired to have Mr. von Knierim's counsel and advice in patent questions because the patent questions had to do with the payment

of our academics, the chemists and engineers who made certain discoveries that had been protected by patents because, according to the regulations in Germany, they had a claim for such payment.

A. Thank you, that is sufficient. I think we are in agreement with the desires of the Tribunal if we abbreviate the next subject matter somewhat, especially since in Exhibit No. 333, Book 12, and page 114, of the English, we have laid down what we have to say.

Apart from what we want to clarify here, do you have any correction or addition to make to this Exhibit 333?

A. No. The Exhibit 333 has been carefully prepared by me personally and I would not know what I had to change in it.

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A. No. The Exhibit 333 has been carefully prepared by me personally and I would not know what I had to change in it.

Q You told us that you were the Chairman of the TEA?

A Yes.

Q How was your position as a result of that, towards the other members of the TEA, and especially toward your Vorstand colleagues?

A My position towards the members of the Vorstand who were in the TEA was quite clearly that of a primus Inter Pares.

Q So that as Chairman of the TEA, you were not a superior of your other Vorstand colleagues?

A No, I was not the superior of my other Vorstand colleagues. I want to generalize this point. That did not exist because one Vorstand member was never the superior or subordinate of any other Vorstand member. That was not customary. The TEA has a table of organization of the business that we shall discuss.

Q Were there any real resolutions made in the TEA; could any resolutions be made in the TEA?

A TEA probably put on the record frequently that something or other was decided on, but as a matter of fact, all so-called resolutions of the TEA depended on the final approval of the Vorstand.

Q If it was decided to grant a credit of 20 million in the TEA, does that mean that the credit had been appropriated and approved of?

A No, it did not. I want to refer to Exhibit 357, WI 8984 in Book 12. These are the by-laws for the Farben enterprise. It is clearly laid down what the Vorstand meeting has to decide upon. Then among this is listed the erection of plants, the acquisition and the sale of patents, licenses, and secrets of manufacturing, the conclusion and the revocation of associate contracts and other matters which require monetary funds.

These four points that I mentioned were the contents of every TEA meeting, for during the TEA meeting the new plants to be constructed were submitted as so-called requests for credit, and if we said in the TEA, that they were approved, it meant that they were so approved under

the reservations of the Vorstand's approval.

Q Or, in other words, they were only a suggestion to the Vorstand?

A Yes.

Q What happened on the next day?

A The next day I reported to the Vorstand the credit that had been suggested for approval. Of course not every individual suggestion, but in summary, by emphasizing the more interesting or the larger credits and they were then either granted or they were rejected in the Vorstand.

Q Then TFA was more often an organization giving expert opinions than an organization that could make decisions?

A As the Chairman of the TFA for many years, and because I had to do quite a lot of thinking about the problems to be solved by TFA about the agenda, etc. I considered the TFA a Board for the information of my technical colleagues. In view of the extreme amount of business in the technical field, it was not at all possible for the technical man of the Vorstand to get proper insight over the technical developments unless this technical development was elucidated, and illustrated from time to time by proper lectures, etc.

As a result, I considered it so important, that I stressed that at the beginning of every TFA meeting, a good lecture was to be given about scientific or technical problems. This lecture and the discussion ensuing after it, - of course they were all lectures on a large scale, with moving pictures, - this discussion took more than one half of the TFA time and I saw in it the quintessence of my task.

Subsequently Dr. Struss, and he already talked about this, - Dr. Struss then showed a large number of charts depicting turnover, expense of research, expenditures of repair work, depreciation, investment, the number of chemists, the number of engineers, the composition of the work, etc., and all of this was intended to inform all of those gentlemen who were responsible for the technical events of Farben, by

this illustrated material.

Subsequently we then talked about patents and contract questions to the extent that contract questions were of a technical nature, - that is the granting of licenses of patents or the taking out of foreign or non-Farben patents. Then we discussed the more unimportant contracts with the University Professors assigned to associates of our firm, and such like.

In the TEA, of course, and within the framework of Dr. Struss' material the requests for new investments were discussed in detail, but the work of the TEA was facilitated in this because the large number of individual requests for new plants had already been worked on in the lower Boards. Below the TEA organizational head there were TEA Sparte meetings, and within the Sparte, and sometimes superior to some Sparte, there was the Manufacturing Commissions and sub-commissions, and in this lower structure of the TEA, by far the most of those requests for new plants were taken care of, or otherwise, the TEA meetings would have taken three days.

I believe that this description characterizes the TEA meetings fairly well.

Q The expression, "Sparte leader" was used repeatedly. I believe that we can, in the time before the recess, describe this concept. Will you tell me when the Sparte leaders were created, and for what reason?

A The institution of the Sparte and the appointment of the so-called Sparte leaders was done in the autumn of 1939; at that time, if I am not mistaken, Mr. Schmitz brought some rumors back, or reports, which might lead one to conclude that we were confronted with a large economic crisis, - world crisis.

DR. HERMUT: It was said that this was 1939. It was not in 1939, but it was in 1929.

(Witness continuing)

A The fact that Farben might have to deal with a large scale

economic crisis in the next years caused the decisive gentleman to institute economy measures, and since economy measures can only be effectively carried out by gentlemen who have the necessary powers, all plants were divided into three groups, called, "Spartan", and one man was made responsible for the leadership of each.

These people were Herr Krauch, Gajowski and I. Our activity in the following years consisted overwhelmingly in the activity of a Commissar for Economy. We had to tone down and decrease the new expenses, the expenses for the erection of new plants, and you will see from 1929 on, these amounts of money decreased to almost zero.

Beyond that, we had to decrease the amount of money to be paid for new research and development. I shall give you figures on that as well. We had to see to it that the stockpiles did not become too large since they always froze a large amount of money, and in our personnel we also had to economize by retiring older gentlemen before their time of retirement had arrived. This activity of the Economy Commissars remained in force until approximately '32 or '35. That is to say, during the entire years of the crisis.

During that time, however, we found that for the technical organization of Farben it was very significant to have all plants subdivided into these three systematically created groups, and so after the crisis had been overcome, we still remained in our positions, of so-called Sparte leaders, and now our task was clearly restricted to the following points:

As before, we still had to see to it that the large expenditures for plants to be newly constructed and for research and development work, were equalized by the income of the particular Sparte. We furthermore, had to see to it that the limitations of the particular Sparte, - every Sparte had a particular field of production, - that this particular limitation was retained.

For instance, that Sparte I would not suddenly begin to work on dye stuffs or something like that; overlappings into technical sectors

had to be settled on a friendly basis amongst the colleagues. We also had one priority right towards our other colleagues in the technical sector, and that was the preliminary approval of the appointment of Procurist and directors in a technical field.

They all required the approval of the Sports Heads. The Plant manager of Leverkusen could not make his application directly to the Central Committee. At any rate, if he did so, he was then endangering the vote to be used by Dr. ter Meer in the Central Committee, but of course, the resolution for the appointment was carried out by the Central Committee.

Q Before dealing with this personal relationship, I believe we should have the recess now.

THE PRESIDENT: The Tribunal will recess until one-thirty.

(Tribunal in recess until 1330 hours.)

(AFTERNOON SESSION)

THE MARSHAL: The Tribunal is again in session.

DIRECT EXAMINATION

DR. FRITZ TER MEER (Continued)

BY DR. BERNDT:

Q. Dr. Ter Meer, at the end...

THE PRESIDENT: I was just going to remark, Dr. Berndt, that we have your Book 2 now in English. Your book 2 was delivered to us during the noon hour.

DR. BERNDT: Unfortunately, we have Book 3 with the statistics and charts in English but not yet in German. Some of my colleagues have expressed their regret that they do not have it yet, because they will probably not be quite able to follow the presentation, but nevertheless I shall attempt to begin the introduction of Book 3.

Q. Dr. Ter Meer, at the end of the morning session we were talking about the Sparte heads, and we had finished that subject with the exception of a few minor points. Will you please tell us what the relationship was between the Sparte heads on the one hand and the members of the Vorstand on the other hand especially those members of the Vorstand who were in Sparte II: for example, the relationship between the head of Sparte II and the Vorstand members who belonged to Sparte II?

A. I will make this question quite clear. The three Sparte leaders were, of course, on quite an equal basis. I, as Chairman of the Tea, did not have any influence on the other Spartes, I and III. When I speak about Sparte II I shall point out that in Sparte II, in view of the enormous size of the plant and the output of products, I could not take care of everything. Of course, as Chairman of the Tea, I had virtually nothing to do with Spartes I and III.

I believe I was in Mr. Gajewski's plant only once in my life, and in the plants of Sparte I, that is in Berlin, perhaps once a year, in connection with Bmw questions, as Sparte I was also working in this

field. But the Spartes worked separately, and as Chairman of the Tea I had no authority in the other Spartes.

I shall now come to my authority in Sparte II, as against the other technical Vorstand colleagues in Sparte II. Here again I was definitely primus inter pares. You must consider that in Sparte II there were people of international renown who were older than I: Professor Moerlein, Dr. Kuchne, Dr. Piator, who in the meantime has retired. I could not make such people my subordinates, and I never attempted to do so.

In Sparte II I worked particularly with dyestuffs, intermediates, related organic products, solvents, dyes, synthetics, but it was too much for me to take an interest in pharmaceuticals or to take an interest in everything that happened in the inorganic business or in light metals.

I limited myself to the field of experience which was closer to me, and our relationship was that of colleagues.

Q. Would you please tell me briefly, to clarify the transaction, what Sparte plastics belonged in?

A. Sparte II.

Q. I believe that is clear, and that we are familiar enough with Tea; there is just one point that might be clarified. We have heard here about credits approved by the Tea. Will you describe to us briefly how the credit was approved; how it went from the very beginning up to the Vorstand, via the Tea?

A. Yes. Let us assume that for some reason, a new sulphuric acid factory had to be built in Central Germany, because there was a new demand for sulphuric acid in the market. - This wasn't first a matter for the company, let us say, the Welfen plant to work internally. The plant would then, presumably, consult other Farben plants which had the most modern processes in the sulphuric acid field, and no doubt knew that in Leverkusen, during the First World War, a new process had been developed

which for certain reasons had never been put into practice.

After this preliminary examination, the matter would probably go to the competent sub-commission, in this case the Sulfo-Uke, where the sulphuric acid manufacturers from all of the big Farben plants met, and there the gentlemen discussed all of the technical questions, etc. After that, the report of the Sulfo-Uke would go to the Inorganic Production Commission, presided over by Dr. Kuchars, and at the same time the report of the Sulfo-Uke would go to us, as head of the Sparte.

Then presumably the matter would have been discussed in the Tea Sparte II Meeting, and after it had gone through all of these steps it would have been submitted to the Tea for approval, and if the Tea decided to submit the proposal to the Vorstand, then the Vorstand would finally approve the credit applied for. That is a good example of how everything was settled on the lowest step in detail, so that the higher authorities later had only the final top decision, since otherwise there was too much material to be dealt with.

Q. Here, taken from a large number of documents, I have a list of the credit applications of the meeting of 20 October 1936. There are over 150 pages, covering a total sum of 95,497,640 marks. It is impossible to explain this in detail to the Tribunal. To give just one example of the credits discussed at a Tea meeting, I should like to hand this to the Secretary General for identification as Exhibit 34. Even though you have touched upon it briefly, will you please tell us again how you reported to the Vorstand about the Tea meetings?

A. I reported to the Vorstand, first of all, about the scientific report made in the Tea on the preceding day. Then I reported the credits, or rather the total sum of the credit applications brought up for approval on the preceding day, divided according to the Sparte, and, if possible, I emphasized certain plants which were perhaps being built up, such as the Buna factory at Schkopau, for instance. I also mentioned individually the sums which were requested for large individual credits

or for new plants in which the commercial Vorstand members were interested; for example, those involving new products. And then the Vorstand took notice of the total sum. Then I reported briefly on the other subjects discussed at the Tso meeting, especially when they involved contracts, for instance with other firms, license agreements for patents, which of course required the approval of the Vorstand.

Q What meetings of important Committees or Commissions did you attend otherwise?

A Regularly I attended the meetings of the Dycstuffs Committee under the chairmanship of Mr. von Schnitzler. These were predominantly commercial meetings, but technical questions were also touched upon - for instance, issuance of new dycstuffs and matters of production or important advertising matters - and therefore I attended these meetings. I also occasionally attended meetings of the Chemicals Committee and also occasionally attended meetings of the Commercial Committee. I attended meetings of the Conference of Plant Managers rarely.

Q That probably covers the most important points. What minutes of commissions did you receive regularly?

A Of all the big commission meetings which I have mentioned, I, of course, received the minutes, and then I also received the numerous minutes of the sub-commissions in the technical field. There were 30 or 40 of those. The Teks, too, of course.

Q We will now go on to the development of Farben in the technical field. Will you describe the events after 1925?

A The time from 1925 to 1929 is characterized by intensified development and research work in Farben which were now directed centrally in this firm which had now been organized. Sparte I was completing the work on the hydrogenation of coal and tars and in 1927 began the construction of the first big plant for 100,000 tons of gasoline in Louisa. Sparte I and II resumed the experiments with synthetic rubber, which had come to a standstill in the preceding years, and they advanced to the point that in 1929 the construction of an experimental Buna plant in Knapseck was fully planned. This

plant was, however, not built because of the depression. Sparto III was at that time working on artificial fibers in its plant at Praunitz and was preparing this plant for large-scale production. In those same years, research on color film was beginning. Nitrogen production was being expanded, and above all a number of new nitrogen fertilizers were being developed and introduced. In Bitterfeld the first modern magnesium plant was being built, a field which, like Buna, went back to the period before the First World War. These developments show a new tendency in the chemical industry. Earlier, chemical industry had, in addition to the ordinary heavy chemicals, acids, such as calcium hypochlorite, etc., produced pharmaceuticals and dyestuffs, that is, high-grade special products. There was now the tendency of large-scale production of industrial raw materials, a tendency which involved both scientific and technical progress, a phenomenon which occurred in all industrial countries. I do not want to go into any more detail here. I refer to my affidavit Exhibit 334, NI-5187, Book 12, page 107, page 126 in the English.

Q Let me ask whether you have any corrections or additions to make to this exhibit?

A Yes. This document deals with the events in Krensberg which were referred to recently in Mr. von Knierim's examination. We learned of the testimony of Geheimrat Schmitz, which was wrong in many points. At that time, together with my other colleagues who were at Krensberg, I began to work out a historical presentation specifically of the technical events in Farben, and this report was handed in to the American authorities in Frankfurt. The affidavit of Mr. Schmitz with the mistakes and our subsequent report were then in Nuernberg

incorporated into a joint affidavit, including some other things. The presentation of developments in Farben prepared in Krasberg was, of course, prepared completely from memory; we had no records at all, we had no connection with our former secretaries and associates, we could not telephone. This was prepared purely from memory. Of course, it therefore contains some mistakes. I do not know whether I should state all of these mistakes for the record.

Q I believe not. As far as I am informed, they are not basic errors. As far as I know they are minor matters.

A They are minor matters, with the exception of my quite mistaken description of the history of Vermittlungsstelle-W and the mobilization plans, but I should prefer to discuss that when the subject comes up.

Q Your later declaration corrects the statement in Exhibit 334.

A In describing technical events from 1925 to 1929, I should like to come to one point because it more or less forms a basis for things which will come up later. I have already said that the merger was motivated by the necessity for simplification in the field of dyestuffs and intermediates. This was begun in the years mentioned and lasted until about 1935. A simplification of too numerous concerns which are not all fully occupied always means that the small or concerns are closed and their capacity is transferred to the bigger concerns. It therefore happened that many Farben plants were closed down, but the plants were not to suffer in the long run. The gaps thus created were filled by the new chemistry which was being developed in the same years; we saw to it that the plants which least exist in the field of dyestuffs and intermediates were given special consideration here. Whole plants were taken over from dyestuffs and intermediate production, but after five or ten years these plants were working at full capacity again because we had put new blood in them. I want to refer specifically to the organic intermediates which were earlier produced only for dyestuffs and pharmaceuticals closely related and the inorganic field of chemistry; synthetic detergents (which are very

important today), solvents, gun-lacs, plastics, softening agents, all of which were produced in the place of dyestuffs and dyestuff intermediates.

Q Now, what happened after 1933?

A After 1933 the measures taken by the new government in combatting unemployment led to a quick minimizing of the results of the depression.

A number of laws and governmental orders, which I shall go into later, brought tax relief for new plants and for substitutes. The purchasing power of the masses rose quickly. That brought Farben increased sales in all fields. Since during the depression expenditures for new plants had been ruthlessly cut back, now, after a three or four-year interruption, there was a great need for new investments, for improvements and expansion of production. New officers and new labor could be employed, and in the course of the work-making program of the government we did a great deal to erect homes and settlements for employees and set up social provisions in the plants. Our work in the chemical and technical field in the time after 1933 can be best characterized as a continuation of what we did from 1926 to 1929. That gave us work for laboratories and long-range developments.

Q The government had an autarchy program. What was Farben's attitude on this question of autarchy?

A Farben never believed in complete, absolute autarchy, autarchy such as Russia, for example, was striving toward, without any regard to practicability. Russia wanted to attain complete autarchy, but we of course never had any such idea; however, the foreign-exchange situation in Germany forced us to substitute domestic production for imported raw materials to a certain extent. This autarchy program of the German government of course furthered and now and then hastened our work. We came to some basic decisions here, too. Our funds were inadequate to do everything that the government had proclaimed as its program, a program which, considered from the point of view of chemical production, involved primarily

synthetic rubber, gasoline, and artificial fibers. We could not go along in all these fields. Consequently, at a meeting of the Central Committee (which at that time still dealt with technical questions), a suggestion of Mr. Bosch was accepted, according to which, first of all in gasoline, expansion was to take place to a certain capacity in the Leuna plant, but for the rest the coal and tar hydrogenation process was to be turned over by license to other parties in Germany. In the case of artificial fibers, we wanted to have only a modest part of the proposed domestic production, but in the case of synthetic rubber we wanted to keep this field in our own hands at first, since we saw here some important problems which promised a great future. The German Buna process, which I shall not go into now, is developed from carbide or acetylene. We saw in acetylene a new chemical basis useful in many types of synthesis, and in a number of our laboratories we specifically directed research into the field of acetylene; developments justified our action. A number of very valuable new products were developed on this basis, which today and in the coming years will be of great significance.

Q In these outarchy endeavors and the use of the chemical industry for these purposes, the name Krauch has been mentioned frequently here. Will you please tell me when Prof. Krauch came to Berlin?

A You are doubtless thinking of his appointment to the Office for German Raw Materials. That must have been in 1936.

Q How did it happen that Prof. Krauch, who belonged to the Vorstand of Farben, was given this office?

A Prof. Krauch himself has described the background of this. I can only give you my personal opinion. I think it quite natural, if the Government wants to carry out an ambitious plan like the Four-Year Plan, an important aspect of which is chemistry, that the government get a good man for this chemical field who knows something about it; and since this involves technical and practical things, such a man could be found only in industry. I have the impression that that was the proper solution for the problem.

Q Was the Vorstand of Farben consulted before Prof. Krauch was called to Berlin? Did it formulate any resolution or anything like that?

A The subject was not brought up in any meeting that I attended. As far as I recall, the appointment of Prof. Krauch was reported at a meeting of either the Central Committee or the Vorstand, but we were not consulted beforehand.

Q Prof. Krauch retained his position in Farben. When he came to Berlin he was a member of the Vorstand, a member of the Central Committee, and a member of the TEA. Which of these three positions did he retain?

A He retained all of his positions. Until 1940 he remained a member of the Vorstand. He also remained a member of the Sparte and a member of the TEA. But Mr. Krauch made only very slight use of these offices. I have no doubt that he himself felt that his activity in a Reich agency would be hard to reconcile with his activity in our firm, and because

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of this quite correct feeling he attended no more meetings of the TEA. I believe that was from the fall of 1936 on. He did not attend any more Vorstand meetings either. I, personally, in 1938 asked Mr. Krauch to resign as head of Sparte I because, as I told him frankly, it would be better if he gave such an important position in our firm to one of his colleagues since he had a lot of business with our competitors and he would not like any difficulty to arise here. However, I can confirm that, Mr. Krauch avoided any such difficulties in a very proper way. In those years I repeatedly heard complaints from younger associates that Mr. Krauch had made decisions in the interest of competitors and not in Farben's interest. Therefore, I can confirm from this and from my own observation, that Dr. Krauch strictly observed the separation between his official business on the one hand and his position in Farben, which was only on paper, on the other hand.

Q When did Prof. Krauch leave the Vorstand?

A In 1940, upon the death of Mr. Bosch.

Q Then nothing was changed in the relation between Prof. Krauch on the one hand and Farben on the other hand?

A Nothing was changed, as he had to a large extent held himself aloof from Farben before, and that continued to be the case. There was another change, however. He became chairman of the Aufsichtsrat.

Q Yes, but, as he told us here, he made no use of this office. He was present at Aufsichtsrat meetings only on formal occasions.

A Actually the position of a member or chairman of an Aufsichtsrat is not of any importance according to German Corporation Law. I cannot tell you how many Aufsichtsrat

meetings he presided at. I recall only one. That was the one at which was celebrated an anniversary or birthday of Mr. Schmitz.

Q You know that the Prosecution charges Farben with having participated to a great extent in the re-armament of the Third Reich. Can you tell me what share Farben had in re-armament?

A Before the war?

Q Yes.

A Farben's activities were not particularly influenced by rearmament. There was only one major field where development was swifter than it would normally have been. That was magnesium. In contrast to aluminum, the light metal magnesium could be produced from purely German raw materials. The result of our research work which has been going on since about 1910, was that certain magnesium alloys could be worked into useful metals. In this way metals were produced which were in demand in the market. Magnesium does not serve only for military purposes. It serves to a very large extent also for normal peacetime purposes. For example, civilian aviation, automobiles, tractors, and a large number of other uses in all kinds of industries. But it is correct that the suggestion for the construction of the Iken and Stassfurt plants came from the Reich Ministry of Aviation, which agency was in charge of both civilian and military aviation.

What the role of the military authorities was in rubber synthesis I shall take up when we discuss the subject of Buna.

In the Krensberg memorandum, Exhibit 334, on pages 6 to 12 in the English text, I have described the developments from 1933 to 1939 in great detail. I should like to refer to what I said there in order not to go into too much detail now.

Q Now we can come to the question of the so-called standby plants. Can you tell me anything about that?

A I must go back a little in this field to be able to answer the question clearly. Once before...No, I didn't mention that before. Excuse me. In considering Farben's production, one observes that Farben produces only a relatively small number of products which go directly to the consumer: Nitrogen fertilizers, which are sold to the farmer, gasoline; pharmaceuticals; and photographic supplies. But the great majority of Farben chemical products goes to other industries for further processing. All the heavy chemicals, the light metals, artificial silk, artificial fibers, solvents, plastics, rubber, dyestuffs, intermediates, etc. These latter products--from the point of view of value, too represent

the majority of Farben production. I must explain that in order to be able to come back to your question. Let us take an example. If a paint factory in Germany buys solvents, gun lac, and dyestuffs from Farben, we do not know whether paint will be produced for military planes or for bathrooms and kitchens. In other words, from the fact that other industries were supplied with our products we can deduce nothing about what is done with them. At least that is the case with many products. We know something definite about what happens to our products only if they have a very definite, limited military use. If, for example, a product can be used only to be made into an explosive in an explosives factory, then we chemists at Farben know very well that this serves rearmament; but in the case of all the products where dozens of different things can be made from them, we do not know where they will end up. I must therefore, in contemplating Farben's participation in rearmament, limit myself to those products where we know that they serve military rearmament. That is the case in supplying powder and explosives factories with acids, diglycol, nitrotoluol, pentaerythrite, and other things. That is the case in the powder stabilizers supplied to powder factories. That would include poison gas(chemical warfare agents) if we had produced them before the outbreak of the war; and that would also include certain special products, for example, in the case of dyestuffs, special dyestuffs for flare ammunition, smoke-screen chemicals, etc. Also special lubricants for airplanes and the well-known iso-octane as a high-grade fuel. We had only experimental plants for the latter two products up to the outbreak of war. I have now sketched but not named all the products. If I add up the turnover for the year 1938, I come to less than fifty million marks in one year. That would be about 3% of the net turnover of Farben at the time. An affidavit on these figures will be worked out and handed in later.

You asked me about standby plants. When rearmament began in Germany, Farben had adopted a very clear and simple policy as to the extent to which it would conform with the wishes and requests of the military authorities.

As far as our existing plants could supply products, they were, of course, supplied, but if the Wehrmacht wanted plants built for larger quantities than could normally be absorbed by the market, then we refused. We had no interest in plants which would be closed under normal conditions. The predecessor firms of Farben had, to a large extent, set up explosives and poison gas facilities in their plants in the first World War. We did not want again to have a situation such that we would have Wehrmacht plants built in the middle of our well-ordered old plants. That brought about confusion as to the ownership and could lead to difficulties. We had no inclination whatever to let ourselves be misused for purposes of rearmament. We therefore told the Wehrmacht: "Build your own plants. Leave us alone with things which are not practicable and which do not suit our normal business." It is therefore a fact that the plants set up for military necessities became so-called standby plants, which the Wehrmacht paid for with its own funds and which belonged to the Reich. We gave our technical experience as far as requested and obligated ourselves to operate the plants if this should become necessary. I refer to the Prosecution's documents - in particular on the conference about the so-called Montan plan and the Farben plan, which deals specifically with these questions. I mean Exhibit 353, XI, 5685, Book 13, Page 65 in the German and 53 in the English.

Q The expression Montan company was just used. Could you please explain that and explain the Montan plan and Farben plan?

A The Montan company was a G.m.B.H. set up by the military authorities and belonging to the military. It had a number of matters to handle connected with rearmament. It also had to arrange contracts for the construction and management of standby plants, with private industry. The head of the Montan industry, Dr. Zeidelhack, was a witness here.

The method of calculating the achievements of private industry in managing such standby plants varied.

The Farben plan provided that Farben would manage the plants on its own and that, since the plants belonged to the state, a sum would be

paid to the state by Farben as rent, as it were, which would be adapted to the normal amortization of the facilities.

The Montan plan was somewhat different. According to this plan, a lease company was formed. With an Aufsichtsrat which included representatives of the Army Ordnance Office; here the gross profit was divided between the private firm and the military budget. That is the subject of the exhibit which I mentioned. One of our lawyers at the time, Mr. Buhl, discussed the advantages of one plan and the other with the men of Dynamit-Nobel.

Q Was the number of standby plants very large?

A The number of standby plants constructed with Farben proper was not very large. The Prosecution has again and again mentioned the four factories for highly concentrated nitric acid, also the Wolfen standby plant for diglycol and powder stabilizers, the diglycol plant in the Buna factory at Schkopau, the standby plants in Huesla and Goudorf, which were under construction at the outbreak of the war, and, finally, a few smaller things which could not really be called standby plants, where the military budget added certain supplementary plants to existing Farben plants to obtain an increase in production, and where the equipment provided the property of the Reich. These are all the cases I can think of at the moment.

Q Did Farben, in addition to deliveries from these standby plants, also deliver products from its own plants - from Farben plants?

A Yes. I should like to recall that General Morgen, who was here at the beginning of the trial, spoke in considerable detail about the relationship of dyestuffs intermediates and explosives production. Farben was a big dyestuffs producer in Germany and therefore manufactured quite a number of intermediate products which, in the case of war, might be delivered to an explosives factory and processed there into explosives. That is true, for example, if nitrotoluol. Normally, a very nice red dye is made of that. If dyestuff production is limited during wartime, then the supplies of nitrotoluol can be given to an explosives factory which makes TNT out of it. And so there are quite a number of dyestuff intermediates which can be processed, most of them after additional processing, into ammunition in an explosives factory. There are the powder stabilizers, which I have already mentioned, which again are made from dyestuffs intermediates. They were made by my father's plant in Uerdingen before the first World War, and the intermediates went either into dyestuff production or into this production. Powder stabilizers, of course, served for hunting powder, for export purposes and for sport ammunition and for all kinds of things. Then there are various minor things which have also been

mentioned here- decontamination agents - that's a rather minor thing - and then Losantin.

Q Will you please explain that?

A Losantin is about the most difficult product of chemical production. Everyone knows bleaching powder (calcium hypochlorite). This is needed in large quantities for the purification of water and disinfecting in hospitals or, if there is an epidemic somewhere in China or India, etc. Ordinary bleaching powder is unstable, and, therefore, a highly concentrated calcium hypochlorite was produced by Farben which was called Perchlorone. If Perchlorone is made into tablets with certain additions, then we have Losantin tablets. That is the secret of this important war material.

Q In the beginning you said that this was the most "ordinary" product. That was translated "the most difficult."

A No, no. That is the simplest.

Q Doctor, you have already indicated Farben's attitude in the production of poison gas. You have to go into this a little more. In 1945, you commented on this in writing, but I consider it very important that this statement that you made in 1945 be recorded here. Therefore, I should like to ask the Tribunal to look at Document Book 3. On page 38 you will find Document #67. When Dr. ter Meer was in custody in Landsberg, he received from a Major Tilley, an English interrogator of the CIC in Frankfurt, the assignment to prepare a report on Farben's work in the field of chemical warfare agents. Dr. ter Meer did prepare this report. We wrote it by hand. The original is in the hands of Major Tilley, but he kept a copy of it. I have this copy, and I offer copies as Document 67, Exhibit #35. At the same time, I offer an affidavit of Dr. ter Meer, stating that this document conforms to the carbon copy in Dr. ter Meer's possession. I should like to refer especially to the fact that this request...

THE PRESIDENT: Dr. Bernat, pardon me. Are you offering this affidavit as a part of Exhibit 35 or as a separate exhibit?

DR. BERNAT: This affidavit of Dr. ter Meer is offered as a part of

Document 67, the so-called gas report. It's one document.

THE PRESIDENT: Very well. The Secretary may include it in the record then.

MR. SPEECHER: We won't have any question about that being a proper copy, and it will be unnecessary to offer the affidavit.

THE PRESIDENT: Then it is stipulated, Dr. Berndt, by the Prosecution that your Document 67, marked Exhibit 35, is an authentic copy of the report about which Dr. ter Meer has just testified.

BY DR. BERNDT:

I do not want to anticipate Dr. ter Meer here. I merely want to point out that this report was prepared on 12 July 1945, a time when Dr. ter Meer had no way of knowing that he would ever have to answer to any court for the production of poison gas by Farben.

Q Now, Doctor, will you please tell us what you know about the conduct of Farben up to the outbreak of war, respecting poison gas?

A I may point out that in addition to the exhibit just handed in there were also some brief reports on Farben's activity in poison-gas production in my Krensberg memorandum, Exhibit 334, which has been mentioned before. Regarding the report prepared at Krensberg, Exhibit 35, I should like to say that it too was, of course, made completely from memory, especially since at that time, on 12 July 1945, the other Farben men who knew something about this field were not in Krensberg yet. As I had no records at the time, this report is not quite complete in a few minor details, but, in general, it is still quite correct to say. Professor Brauch has already testified - and confirmed this when he was questioned - that in the 1930's Professor Bosch was approached by Wehrmacht circles and it was suggested that Farben should work on chemical warfare agents and offer its plants for production of such gasses. Dr. Bosch discussed this Wehrmacht request with Brauch and me. We agreed immediately that we would refuse, and we did refuse. Professor Hoerlein has also testified that a few years later he refused an assignment of the Army Ordnance Office, when his associate Schrader in Elberfeld, while working on

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insecticides, found some new highly toxic substances. As to the attitude of Bosch, Krauch, and ter Meer, we have evidence in a Prosecution exhibit. I refer to Exhibit 627, NI 5692, Book 35, page 146. Unfortunately I do not know the page of the English.

Q. It is page 71 in the English.

A. This is a record of a meeting in Ludwigshafen in May 1937.

Q. 31 May 1937.

A. And this says, "Struss says that Farben will continue to remain aloof from chemical warfare agents. There is no change in the previous decision."

The Army Ordnance Office continued to insist, and Farben was not able to hold its position absolutely, but Dr. Esmann has testified here that upon outbreak of the war Farben actually had no poison gas plant ready for operation, aside from an old plant for tear gas. Upon the outbreak of the war or after the outbreak of the war, Farben did support the military authorities in this field to a considerable extent, specifically by the construction of war gas plants at Gendorf and Dyhernfurth. I mentioned this too in my Krensberg memorandum, exhibit 304.

Dr. BERNDT:

This memorandum is of 12 July 1945. I should like to emphasize that the Prosecution has offered exhibits which completely confirm Dr. ter Meer's statement in this report. I refer to exhibit 108, Book 5, page 110 of the English; 114 in Book 5, English page 125; and finally exhibit 109 in the same book, Book 5, page 122. The statements which Dr. ter Meer made without any records are absolutely confirmed by these exhibits.

Q. Doctor, I believe it would be a good idea if you would again describe Farben's conduct in the field of poison gas after the outbreak of the war, just briefly.

A. A certain time after the outbreak of the war -- I believe I said in my Krensberg report that it was after the end of the campaign in Poland, but it seems that it was during the Polish campaign, a few weeks earlier than I said -- at that time Professor Hoorlein, Dr. Ambros, and I were invited to come to the Army Ordnance Office together. At this conference at the Army Ordnance Office the senior

officer present — I can't think of the name at the moment — explained to us that there was information from abroad that Germany's enemies were producing chemical warfare agents in large quantities, and consequently Germany's preparation in this field was completely inadequate.

Professor Hoerlein has offered an exhibit mentioning the use of chemical warfare agents in the campaign against Poland.

After that the products developed at Elberfeld were discussed, since they were especially important and especially interesting. In the years since their invention, that was 1937, because Elberfeld refused to work on them any more, they had been taken over by a group of official chemists for the Army Ordnance Office and had been developed further. Certain parts of the process had brought difficulties to them, principally difficulties with the apparatus, and the delivery of certain raw materials for these products was not yet guaranteed.

At the time, on the basis of the request of the Army Ordnance Office — since war had already broken out — we took the point of view that we could no longer fold our hands in our laps, and I said that we were willing to give the Army Ordnance Office the support which it requested. This may seem insignificant here, but it perhaps indicates how unwillingly we did it: I added to this statement the words, "but we do not want to earn any money in this field". In the course of this collaboration with the Army Ordnance Office, the important poison-gas plant at Dyhernfurth, where Tabun was produced, was built in the East. Later a plant was supposed to be built at Falkenhagen near Berlin, but this was not done.

Q. In the translation the situation was presented as if Dr. ter Meer had said something about the use of poison gas against Poland. Will you please explain what you were referring to, Doctor?

A. As I recall, Professor Hoerlein submitted an affidavit from a military official named Wirt, who had observed in Poland that

the Polish troops had used Lost (mustard gas). It was not the Germans who used it.

Q. Did you know whether the Germans ever used poison gas in the last war?

A. I never heard that that was done.

Q. Do you know anything about a visit of Dr. Ambros to Hitler where the use of poison gas was discussed?

A. Yes, I made remarks about this visit in the documents which I have mentioned. I have not gone into the details of this visit. I shall leave that to Dr. Ambros.

Q. I have no farther questions at the moment regarding poison gas, but the term "Orgasid" was mentioned, and I believe just before the recess you could explain to us what Orgasid is?

A. In about 1935 the Army Ordnance Office wanted to have a plant for Lost or mustard gas built. They approached Farben, because Farben was the only firm in Germany with large scale technical processes for the production of the preliminary products for Lost. These preliminary products in Ethylene, which is produced from alcohol, and various intermediates which lead from Ethylene to Thiodiglycol are all, including Thiodiglycol completely harmless, and are used in large quantities in any normal peace-time economy. I remind you of Fretons, which is used quite generally in America, which is made of Ethylene, and I remind you or rather I point out that Ethylene is used to make Polystyrene, a very valuable plastic, and Styrol is also contained in our Buns. The last step before the production of Lost, Thiodiglycol is a product which we had been producing in Farben for years for textile purposes. It is used in printing silk and artificial silk. Since we knew the technical processes for making the preliminary products we could not very well keep those processes from the Army Ordnance Office. We wanted to avoid any compulsory measures. The matter was submitted to me, and after listening to the various

reasons I agreed. They had the advantage that the contract which we had to conclude regarding turning over our knowledge contained clauses to protect our own commercial interests for the peace-time production. We did not want to damage our normal business by turning over our processes, but the actual end product, the gas, was produced according to a process of the Auer Company. The Auer Company is a firm in which we had no interest. It belonged to the Deutsche Gold and Silber Scheideanstalt, and the Auer Company together with the firm Goldschmidt, founded the Orgasid and Orgasid had charge of the Army plants in Amendorf for the production of Lost; and then there were two other plants where Orgasid had some significance. The Army Ordnance Office some two years later wanted to have a stand-by plant for this same gas, Lost, in Troisberg. Later we called it Berndorf. The affidavit No. 598, NI-7430, Book 33, page 96 in the German and the English text deals with this Troisberg plant, where Farben writes to the office for German raw materials that we are ready in building up the stand-by plants in making available our experience and to act as an advisory technical office for the construction. The plant for the production of Lost was a plant taken over by Orgasid. To avoid misunderstanding I point out that at the same plant, at Dandorf, after the outbreak of War, a direct mustard gas factory was built. It was operated and built not by Orgasid, but by Farben for the Army and finally the Buna factory in huels. Orgasid also planned a Lost plant, which can be seen from Exhibit No. 597, NI-7382, Book 33, page 90, in the German and page 81 in the English.

THE PRESIDENT: The Tribunal will rise for its usual afternoon recess.

(Thereupon a short recess was taken)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Dr. Berndt, may I interrupt you for a moment to make an observation. It's come to our attention that there are a good many corrections of translations being made. That does not call for any hard and fast rule. Purely technical and incidental mistranslations will be taken care of on the record automatically anyway. However, if there is a substantial error as to something that is calculated to mislead the Tribunal, it would not be proper to deny counsel an opportunity to call it to our attention. We think that this is a matter that calls for the exercise of sound discretion and that perhaps a little more of it has been indulged in than is warranted in the interests of time. Unless Counsel feels that the error is one that is of serious importance and calculated to convey a wrong impression to the Tribunal, we think that you had better content yourself with seeing that the correction is made on the record in the transcript. Ordinarily those things are made automatically by the translation staff where there is just a slip of a translation. I just mention that and ask your cooperation in seeing that too much of our time is not taken up in correcting these errors. And another thing. We have observed a little over-cooperation, I think, on the part of counsel and some of the defendants in warning the witness to go more slowly. After all, the people that have to deal with the matter of the speed are the translators and they have a button with which they can flash the lights and I think you can depend upon them to give us a signal if matters get to going too rapidly. It's a little bit distracting if we all give signals to the interpreters. We ask that you exercise good sound judgment in those

matters and I think it will expedite the trial of the case in an orderly way. You may proceed, Doctor.

BY DR. BERNDT:

Q. Dr. Ter Meer, at the end you discussed the Orgacid Company. We repeatedly heard about the Anorgana G.m.b.H. Will you please make some statements about that company.

A. I had not quite completed my explanations in regard to Huels when the recess occurred. The Exhibit 597 that I mentioned -- the document number and page number of which I mentioned, -- states expressly in the third paragraph that we, and that is Farben, should now make ready the blueprints for the esterification plants, direct lost plants and the necessary stockpiling storage rooms which would be required by us. This points to the fact that these documents were submitted to us by the Auer Company, one of the partners of the Orgacid Company. In fact, this plant later, however, was not constructed by the Auer Company, but by Farben, for reasons which will be explained by Dr. Ambros in more detail at a later time. The process was not ready for operation until the year 1942. I now turn to the Anorgana Plant. That company was an enterprise founded by Farben and which belonged exclusively to Farben. It was G.m.b.H. a limited stock corporation, which was used to operate the two plants, Dyhernfurth and Gendorf, which belonged to the Reich. The foundation of a specific company had the purpose of separating the accounts of that enterprise from the accounts of Farben. The Anorgana had an Aufsichtsrat in which I presided. Two or three gentlemen from the Army Ordnance Office were members of this Aufsichtsrat. The Aufsichtsrat was purposely created in order to give the gentlemen

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from the Army Ordnance Office an opportunity to see our accounts, especially since in the chemical warfare gas field we were not making any profits. Anorgana served as the overall frame for the operation of the Dyhernfurth Plant, also owned by the Reich, in which the chemical warfare agent Tabun was later produced. For the intended plant in Falkenhagen, which was not completed in time, we had founded a so-called operation company which we called Montoron. For in the case of Falkenhagen we wanted to concern ourselves even less with the affair as far as the accounts were concerned. We merely wanted to have that enterprise operated for the accounts of the Reich, and have our own expenses refunded to us exclusively.

Q. That is all you have to say?

A. Yes.

Q. We also heard about a Montoron.

A. I just mentioned that company.

Q. You have finished with that also?

A. Yes.

Q. One of the enterprises which was repeatedly mentioned is the DAG, the Dynamit Nobel A.G. The relationship of Farben to DAG must be considered briefly by us. Before we do so however, may I offer an affidavit of Dr. Struss from Document Book Number 3. It is to be found in Document Book Number 3, as I said, on page 24. May I ask that it be given Exhibit Number 36.

THE PRESIDENT: That, for the completion of the record, is your Document 65, Doctor Berndt?

DR. BERNDT: Yes, Your Honors, Exhibit Number 36, Document 65.

THE PRESIDENT: Very well.

BY DR. BEUDOT:

Q. In this document Dr. Struss states that yearly investigation reports were sent to the DAG but that Dr. Struss never submitted these reports to Dr. Ter Meer, and in the last paragraph Dr. Struss stated that turnover figures for the DAG were submitted to him on the occasion when he turned over the figures for Farben, and that he received them every three months from the Central Bookkeeping Administration. Could you please state your opinion of the relationship between the DAG and Farben?

A. During earlier examinations and submission of documents, it was already proven that the majority of the stock property of the DAG was in possession of Farben, and that there was a contract of community of interests concluded in 1926, I believe, between the two enterprises. Quite apart therefrom, however, the relationship between Farben and Dynamit Nobel was one of complete technical independence. It is true that Dr. Paul Mueller was the member, or a guest, in the technical committee, the TEA, but the plants of the Dynamit Nobel A.G. were managed by Dr. Paul Mueller completely independently. Dr. Paul Mueller was for many years the director of the Dynamit Nobel A.G. which already, during the earlier generation, had been owned by his family, and when he concluded the transaction with Farben in 1926, he made a specific condition that he should remain the independent manager of his own enterprise. The Dynamit A.G. quite formally belonged to Sparte 3 of the I.G. Farben Industrie A.G. However, the head of the Sparte, Dr. Gaylewski, Sparte 3, did therefrom not derive any influence to be exercised upon the Dynamit Nobel A.G.

Q. You know that Dr. Struss stated in Affidavit Exhibit Number 325, that all credit applications of DAG were discussed in the TEA. But you also know that Dr. Struss, when he was a witness here on 9 October 1947, changed that statement. But please tell me first of all how the credit applications of DAG were treated in the TEA.

A. Undoubtedly it was the case that during the first time after the

mutual interest agreement was concluded and after Dr. Paul Muller was taken into the TEA, the credits of the Dynamit Nobel A.G. were discussed in the TEA in the same manner as was done in the case of the other Farben plants. Dr. Struss testified that this treatment of credit applications during the later years, after the rearmament program was started, when one or the other credit was to be kept secret somehow, that then no longer all credits of the Dynamit Nobel A.G. were discussed in the TEA, and that particularly applied during the time of war. Furthermore, in the case of the extension of experiences of the Dynamit Nobel A.G., and the munitions enterprises operated by them, these were all standby plants which belonged to the Reich where the money was furnished by the Reich and these credits did not have to be submitted to the TEA. They derived their funds from some other place.

Q. Did you have any knowledge about these plants at all -- that is the plants you just now mentioned?

A. These standby plants which were built by the Reich with the technical assistance of the Dynamit A.G. were so unknown to me, even by name, that when I stayed in Kronsberg it happened on two separate occasions that I read in a German newspaper a certain news of the I.G. Farben Plant "X" is being destroyed. Since Dr. Mann from the Army Ordnance Office was also in Kronsberg he told me twice "Dr. Ter Meer this is a standby plant of the Reich which was built in cooperation with the Dynamit A.G. It is a matter of fact that I did not even know the names of these plants because the matter was kept so strictly secret.

Q. Do you have anything else to say in regard to the problem of the DAG, from your own knowledge?

A. I already reported previously about the discussion with the DAG when the Montoron Plant and the other plant were discussed. The annual auditing reports of the DAG I did not check over.

DR. CERNET: Mr. President, I do not intend to ask the witness Ter Meer any further questions about individual products of Farben. The

defense has agreed that the gentlemen from Sparte 1 and 3 shall speak about their particular products and also the gentlemen of Sparte 2 will speak about the heavy chemicals, light metals, and organic compounds, Dr. Ter Meer, however; has taken it upon himself to describe the development of synthetic rubber, and we can come back to that later when we have the necessary books at our disposal. May I now ask that I be permitted to offer several documents in Book 3 of Dr. Ter Meer. In this book there are also various statistical documents of which I have prepared a specially worked out color chart. The Secretary General already has one. I regret that I am not able to give all my colleagues and defendants a copy of these specially prepared charts. We have only received a few of these because of the scarcity of time.

THE PRESIDENT: are these colored charts the same -- cover the same subject matter as the black and white charts in your book?

DR. BERNDT: Yes, Your Honors. Only the illustration in color is more easily understood than the black and white ones. The prosecution described development of Farben from 1933 on by submitting a large number of documents. We consider it our duty to start with the development of Farben from the year 1925 and for that reason on page 1 of the English document book we made a list for the expenditure of new plants from 1925 to 1939. May I ask that this document be admitted -- Document Number 51 be admitted as Exhibit number 37. From the first column it can be seen that the new installations from 1925 on ascended very decidedly after 1927 and 1928 and that they then decreased until in 1932 they arrive at the lowest point and then again ascend, and that only with 1937 do they reach a level that exceeds that of 1928.

Documents 52 through 56 are documents which corroborate and illustrate those facts in detail. I have no remarks to make about this. May I ask that the next documents -- Document 52 be accepted as Exhibit No. 38; Document 53 as Exhibit 39, Document 54 be accepted as Exhibit No. 38; Document 53 as Exhibit 39, Document 54 as Exhibit No. 40, Document 55 as Exhibit No. 41; Document No 56 be received as Exhibit No. 42.

This shows the depreciation in Farben plants. Document 57, which will be termed Exhibit 43, shows the number of products manufactured by Sparte II of Farben. It is intended to show how versatile the activity of Farben was, especially within the field of Sparte II. This list covers the years 1937 through 1943.

Document 58, which I offer as Exhibit No. 44, represents a few excerpts from the TEA records from the years 1938 and 1939.

The Prosecution has asserted that in those pre-war years Farben had allegedly done everything to prepare for the war and that they had endeavored to create products exclusively necessary for war. Through the excerpts from the TEA records that I am submitting, it is to be shown that, to the contrary, Farben endeavored from 1938 on to decrease their new investments. In the years 1938 to 1939 altogether seventeen TEA meetings were called, and I am reserving for myself the right of submitting the records from other meetings as well.

Document No. 59 will be offered as Exhibit No. 45. It shows the scientific research of Farben. In the fourth column the total sums, in millions, are given that Farben intended for scientific research. It is interesting in this connection that the highest figure for scientific research works was intended in 1927 to be the sum of 154 million marks and the least, namely 40.5 million was intended in 1932. And it is also interesting that the sums of 1927 through 1929 were never reached at any time in the period of time after 1933.

May I also point to the fact that, as can be seen from the last column, Farben did not dismiss their chemists who worked in this part of scientific work and especially not during those years when the scientific research had to be increased of necessity.

Document No. 60 will be offered as Exhibit No. 46. It shows these chemists that worked in scientific work in Sparte II. A small mistake has occurred in the index. It says "Chemiker der Hauptgruppe 2," and in English it is translated as "Chemists of Main Group II." That should be corrected in English to "Chemists of Sparte II" -- not Main Group.

WITNESS: Sparte II and Main Group II are the same; they are identical in meaning.

DR. HENDRIT: This document has a few appendices, which I do not have to mention in particular.

We now turn to Document No. 61, which I ask be accepted as Exhibit No. 47. The color chart in this connection is a little more profitable for understanding the matter than the black and white. It begins in 1926 and shows an increase of the turnover, reaching its highest point in 1929: 1 billion 437 million. The turnover then decreases until, in 1932, it reaches its lowest level of 871 millions. It then ascends, and in 1939 already 1 billion 989 million is the turnover, roughly 2 billions. If I now compare these figures, I can see that in 1937 the highest turnover was reached which was 1 billion 515 millions. This is the figure approximately approaching that figure before Hitler's ascension to power. When looking very closely, I can see that the turnover in 1939 reaches a figure of 1 billion 648 millions. It is taken out in the sketch at the right. This comprises all those products which also were manufactured within Farben in 1939. Those products which then amount to the increased turnover and which are the increased causing effect compared to 1929 are the

new fields that Farben dealt with: cellulose wool, gasoline, Buna, synthetic plastics, and metals, which altogether in 1929 amounted to a total turnover of 493 millions.

This document number 61 which has Exhibit No. 47 is supplemented by Document No. 62, which will be given Exhibit No. 48. There is a graphic illustration of the Farben turnover within Sparte II. It is interesting in this connection to look on the columns at the lower left-hand corner which are the turnover in dyestuffs; the highest turnover in dyestuffs was reached in 1928 and that was never again reached later until 1939.

The fact that Buna ascends so sharply in 1939 can be explained from the circumstances that we shall further illustrate during our presentation: Document No. 63 will be submitted as Exhibit No. 49. It shows the turnover within Sparte I and Sparte III. It is interesting that in the case of fertilizer the highest turnover was reached in 1928 and that the highest figure was never again reached in the years after 1932.

It is equalized by the increase in production which we can see in the sketch entitled "Gasoline." This was manufactured in those plants where nitrogen was formerly produced.

You further see in the right-hand corner, at the top, the increase of the production of cellulose and artificial silk; and in the last corner on the right you can see that in 1939 the highest turnover of photographic supplies was achieved.

Document No. 64, on page 23 of the English, will be provided with Exhibit No. 50. It is an affidavit of Dr. Struss where he explains that since 1936 and '37 the authoritative direction of building activity increased severely and that especially the allocation of iron for most fields of work had to pass through the Reich Office for Economic Development, and the officials of this particular office, in an ever-increasingly ruthless manner, interfered with the domestic

affairs of I. G. Farben A. G. As a result, Dr. Ter Meer at one time asked Dr. Struss: "How many credits on the agenda of the next Technical Committee meeting cover the wishes of Farben, and how many cover those of the authorities?" And then Struss had to reply that not even ten percent credit had been requested by Farben themselves.

Document No. 65 has already been offered by me as Exhibit No. 36.

The remaining documents will be offered by me at a later date. In this book III we have seen statistical papers and charts and I would consider it expedient now for Dr. Ter Meer, first of all, to remark on the question of new installations and depreciation questions in the years 1925 through 1939.

WITNESS: May I ask that page one of the Exhibit No. 37 be turned to, where the expenditures for the new installations for the years 1925 through 1939 are depicted, and the normal and special depreciations on the books of Farben for the years 1928 through 1939? The figures for 1925 through 1927 could not be established with exactitude and therefore they are missing.

Dr. Berndt has already pointed out that already in 1926, '27, '28, and '29 it experienced a period of sound economic situation in Germany, and that during that short book period high investments were effected which reach their highest level in 1927 in the figure of 242. Figures approximating this amount were only approached again in 1937. If the development in these figures is considered from 1927 after the collapse, the depression, and then again the ascention until 1939 — one must take into account that in the time after 1933 two factors affected economic conditions in Germany, and in the final analysis the investment activities of Farben, and that they were determining factors.

Through the removal of unemployment, the purchasing power of large masses had been increased extra-ordinarily. Therefore, by reason

of this large purchasing power of the larger masses, we had a domestic boom on the market, that is to say, a boom caused by consumption, as it is called. By reason of this boom caused by consumption at home and a boom in investment also went hand in hand, caused by the autarky policy of the German Reich, the extremely intensive assistance granted to the agricultural population and, finally, also because of rearmament.

The combination of these two factors affecting the economic conditions very strongly, placed large demands on us in regard to the installation of new plants, as they are depicted in the increase of figures here. The consideration of absolute figures is always a very difficult task, and it is always very agreeable when they can be compared to figures which have some relation to the investment figures.

That is the case in the depreciations that a firm undertakes during one year. For the chemical industry in all countries — and I can say this since I was working in America, and know conditions in England, France, and Italy — for these countries the principle is in effect in a plant or in a chemical industry has a sum of depreciation equal for all these countries that any plant should have to invest this amount of money that arises from the depreciation in their own plant again every year unless it wants to exploit their capital. Especially in the chemical industry, the depreciation of machinery is extremely heavy, and progress in the chemical industry is extremely swift. If this results, the necessity of putting the profit resulting from amortization every year again into the plant unless your plant is to become incapable to compete. The extension over and beyond a certain production level must be done by putting in new capital, and it is done in the most cases of good commercial years by using non-distributed profits. That is customary not only with us but in America the use of the so-called "undivided profits" for such extensions and increases of production is well known. If one regards these figures under these particular aspects, one can see that from 1930 to 1933 we were forced by the depression and that we could not undertake the necessary reorganization and new installations that were necessary, and that a large part of this renovation and modernization requirement was spread over the other, later years.

We can furthermore see that for the period of time from 1928 on through 1941 — that is eleven years — the sum of new installations when compared with the sum of depreciations results in the fact that we invested

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approximately fifty per cent more than the depreciation amounts too. There is no chemical expert who can deny that this is a normal procedure and say that it is an abnormal picture.

Nevertheless, as my defense counsel has already said, he intends to introduce the TEA meeting records of the seventeen meetings from October 1936, after the Four Year Plan was proclaimed, until August of 1939, the outbreak of the war. But this will be done at a later time since the Translation Department is over-worked. The Tribunal will then have an opportunity when looking through these TEA records that already in 1937 we took the reins firmly in our hands in order not to invest too much and that from 1938 on we resolved almost in every TEA meeting not to permit the investment sums to increase too much. From 1938 to 1939 there is actually a decrease of about ten per cent in investments.

In Exhibit No. 44, which are the excerpts from some TEA records, it can be seen that until the beginning of the war we were always endeavoring to limit the expenditures. The reason for that was simple. We knew that if we continued to invest in new installations in an ever-increasing amount we should very soon have to increase our capital, and we wanted to avoid, if possible, enlarging our firm since the so-called Third Reich looked with disfavor upon large enterprises.

On the other hand, however, we wanted to maintain a sound relationship with regard to our depreciation sums, and did not want to exceed the depreciation sums for many years in the long run.

BY DR. BERNUT:

4. We also submitted Document No. 57, as Exhibit

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No. 43, on page 7, in which Dr. Struss makes statements about the products manufactured by Sparte II. Would you please make some statements about this, very briefly?

A. The list printed on page 7 is an excerpt from original documents from those times and it indicates how many chemical products were produced in Sparte II; as can be seen from the affidavit, this is only a list of so-called chemical individual products and not duplications that were produced by certain combinations or mixtures. If they were to be included, then there would be more than ten thousand products listed. In other words, that was not done.

(Ans. Cont'd).-- This list was incorporated here in particular to show how large the production extent of the most complicated Sparte II in Farben was. By doing so I wanted to show how complicated the work was in this entire field; what detailed, expert knowledge was necessary to manage such field, whether it was dye stuff, pharmaceuticals or intermediates, and with the aid of this chart you will be able to understand better what I said previously, that, for one man it is such too much to have an oversight over all of this, and that several persons were needed to divide these things up.

I wanted to point out also, that in the cases of organic intermediates alone, there were more than 2000 individual products. Add to that, inorganic products there were about 500 individual products. From among these 2,500 products, we have heard frequently during the presentation of this case, but only of about 20. We always heard about Diglycol powder, stabilizers and Isosatin.

It may be understandable, perhaps, that the technicians, the technical men, could not avoid a smile when the Prosecution presented these products for they knew very well how tremendously large the number of products we produced was, and that if only some 20 are again listed, one can figure out the percentage very easily and as to what these 20 products amount to, when compared to the entire production.

Q.- Dr. Tar Isaac, do you want to say anything about Exhibit 45 and 46 which deal with the scientific work of Farben, and the scientific work of the chemists?

A.- The chart on page 12 is to show essentially how expenditures were handled for scientific work within Farben, and upon the hands of the three Sparte I, II and III, and listed according to the total expenditure for Farben as a whole.

As already stated by Dr. Berndt, we tried to retain the majority of our chemists in employment with us also during the crisis. The decrease

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Q.- Dr. For Moor, do you want to say anything about Exhibit 45 and 46 which deal with the scientific work of Farben, and the scientific work of the chemists?

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As already stated by Dr. Berndt, we tried to retain the majority of our chemists in employment with us also during the crisis. The decrease

in costs and expenditure can be explained by the fact that during the depression time we permitted our chemists to work only in the laboratory, on ordinary laboratory work, because the carrying out of development work in large experimental installations is much more extensive and amounts to millions very quickly. That explains the large change in the expenditures, and nevertheless the constant figure in the number of chemists employed. It is true, of course, that during the depression years we did not hire any new chemists, which explains the gradual decrease of 1160 to 1050 and to 1000, and in the ensuing years, when they again slowly employed some chemists so that our staff would not become too depleted, however, the chart shows sufficiently well that there was no particular effort made to work on any particular field in the years through the war.

The following chart, on page 13, shows the distribution of chemists concerned with scientific work in Sparte II. There are approximately 800 such persons, and on pages 13 and 14, their distribution in the various fields of work is shown.

At the head are dyestuffs and textiles. Auxiliary action is needed, therefore, with the figure of 267 chemists, and then in the case of rubber and plastics there are 126 chemists approximately, and then the organic intermediates, anorganics and pharmaceuticals were approximately 100 chemists each.

This is to show a picture of the work which we dealt with during the years in question. These figures referred to 1938. They are based on the period of the first of January, 1938, as these figures which were also used in evidence show.

Q.- Did you want to say anything about Exhibits 47, 48 and 49? The graphic charts about the turnover of Parbon?

A.- I believe that these illustrations speak for themselves. On the main sheet, which was the curves, it can be seen how these four fields of work beginning comparatively early in the case of nitrogen, Benz a little

Later, magnesium, of course, a little earlier. These are the new fields of work which we developed at the time, and which caused the fact that in 1939 we had an approximate turnover of 2 billion Reichsmark. The other two sheets show that we had decreases in all other departments, which is nitrogen and dyestuffs; that of course, we tried to equalize those decreases, and therefore had to develop new fields of work for our firm. That is all I have to say in this connection.

DR. BERNDT: Mr. President, I have reached a definite stage in my presentation. May I ask you whether the Tribunal has document books Nos. 2, 10 and 11?

THE PRESIDENT: We have No. 2. We do not have 10 and 11, but we have 6 and 7, also.

DR. BERNDT: Have you received books 4 and 5?

THE PRESIDENT: No, we have not.

DR. BERNDT: I shall try to find out how the books regarding Sauer are progressing.

THE PRESIDENT: We have only about five minutes. Is there anything you can do during that time, Dr. Berndt?

Very well, if you have any difficulty about your books, perhaps you had better see Judge Merrill at the time of adjournment. He may be of some help to you in getting your books for tomorrow. I may say also that Judge Hobart would like to see you at adjournment too about another matter.

Are there any announcements from anyone before we recess for the day?

DR. BIERLICH: Mr. President, my colleagues, Dr. Henze who cannot be present here today asked me to make a motion on his behalf that Dr. Oster be permitted to stay away from the proceedings tomorrow and the day thereafter for the preparation of his defense. Since the evening hours cannot be very well used, in view of his age and his physical condition.

THE PRESIDENT: Very well, that request will be granted. You advise counsel.

11 Feb-A-FL-24-4-Stewart (Int. Katz)

Court No. VI, Case VI

Is there anything else, gentlemen?

If not, the Tribunal will rise until 9:30 tomorrow morning.

(Tribunal in recess until 0930 hours, February 12, 1948)

CERTIFICATE OF COMMISSIONER

I, JAMES G. MULROY, AGO #B-397399, hereby certify that I am a duly appointed, qualified and acting Commissioner, to take the testimony of witnesses under Order of Tribunal No. 6, in the case of United States of America vs Krauch et al; that pursuant to said Order, upon the dates hereinafter listed, I have supervised the taking of testimony of witnesses examined before me, and said testimony has heretofore been properly recorded, reported and filed in the Office of the Secretary General and now constitutes a part of the official transcript of proceedings in the above case; and the dates of such examinations, names of witnesses and pages of the said official transcript are as follows:

<u>Date</u>	<u>Name of Witness</u>	<u>Official Transcript</u>
12/28 December, 1947	Paul H. Haeni	4577-4595
15 December, 1947	Karl Wolff	4596-4657
15 December, 1947	Gustav Schlotterer	" "
17 December, 1947	Kurt Krugger	4692-4710
9 January, 1948	Adolf Hoehle	4946-5024
9 January, 1948	Willi Dagne	" "
9 January, 1948	Karl Amend	" "
17 January, 1948	Alfred Zaun	5470-5512
17 January, 1948	Perry Broad	" "
6 February, 1948	Josef Johan	6826-6881
7 February, 1948	Frank Rotenberg	6957-6979
26 February, 1948	Noack Treister	7696-7732
27-28 February, 1948	Rene Balandier	7925-7963
16 March, 1948	Fritz Goernert	9288-9305
16-17 March, 1948	Gerhard Ritter	9305-9358
17 March, 1948	Heinrich Van Beek	9359-9376
18 March, 1948	Dr. Charles Bendel	9584-9616b

I further certify that the aforesaid transcript pages comprise a full, true and correct report of said proceedings, testimony and evidence heard and recorded at proceedings before said Commissioner.

Dated at Nurnberg, Germany, March 31, 1948.

JAMES G. MULROY
Commissioner of Tribunal No. 6

Official Transcript of Hearing before a
Commission for Military Tribunal VI, Case
VI, in the matter of the United States of
America, against Karl Krauch, et al, de-
fendants, sitting at Vienna, Austria, on
6 February 1948, at 0930 hours, Commis-
sioner James G. Mulroy, presiding.

THE MARSHAL: The Commission of Military Tribunal Number VI is
now in session.

God save the United States and this honorable Tribunal.

MR. NEWMAN: Mr. Commissioner, the two witnesses are here now.

THE COMMISSIONER: Gentlemen of the Prosecution and Defense, are
you ready to proceed?

MR. NEWMAN: Yes.

DR. VON METZLER: Yes.

THE COMMISSIONER: For the record, it will be noted that this pro-
ceeding is carried out in accordance with an order of the United States
Military Tribunal Number VI, sitting in the Palace of Justice at Nurnberg,
Germany. The order is dated the 29th day of January 1948 and directs me
as the Commissioner of the Tribunal to take the testimony of two witnesses,
Josef Johann and Franz Rottenberg, residents of the City of Vienna, in the
State of Austria. This examination will be carried on in accordance with
the rules of the acceptance of criminal testimony and only one witness at
a time will be admitted in the Courtroom.

I will ask you, Dr. Neuman, have you anything that you wish to say
for the purpose of the record?

MR. NEWMAN: No, Mr. Commissioner.

THE COMMISSIONER: Has Defense Counsel anything that they wish to
say for the record?

DR. BOETTCHER: Not at this time.

THE COMMISSIONER: I will ask you, Dr. Boettcher, do you represent
all of the defendants in the case of the United States of America versus
Karl Krauch?

DR. BOETTCHER: No, I only represent Dr. Krauch.

THE COMMISSIONER: Is there any one of the Defense Counsel here who is authorized to state that all the parties defendant who are interested in this hearing are represented by counsel?

DR. BOETTCHER: No, sir.

THE COMMISSIONER: And each of the Defense Counsel represents only his particular clients?

DR. BOETTCHER: Yes, sir.

THE COMMISSIONER: You may call your first witness.

JOSEF JOHAN, a witness, took the stand and testified as follows:

THE COMMISSIONER: Mr. Witness, will you please raise your right hand, pronounce your name, ---

WITNESS JOSEF JOHAN: Dr. Josef Johan.

THE COMMISSIONER: And repeat after me: I swear by God, the Almighty and the Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath)

THE COMMISSIONER: The witness may be seated.

MR. NEWMAN: Mr. Commissioner, if it is agreeable, I will suggest that we excuse Mr. Rottenberg, who is also present outside, until after the recess at lunchtime.

THE COMMISSIONER: Mr. Newman, it is perfectly agreeable to me, but in speaking to Dr. Rottenberg just a moment ago, he indicated that he wished to remain in attendance, to be called whenever he is needed. Mr. Newman, if you wish to verify that, you may take such time.

MR. NEWMAN: No, thank you.

THE COMMISSIONER: The witness Josef Johan is now with the Prosecution.

DIRECT EXAMINATION

JOSEF JOHAN

BY DR. NEWMAN:

Q Dr. Johan, will you please state your name and address once again for the record?

A Dr. Josef Johan, residing in 3rd District, Reismarstrasse 48.

Q Dr. Johan, this is your affidavit of September 13, 1947.

MR. NEWMAN: This, Mr. Commissioner, is our Exhibit 1067, HI-11958, and this is in our Document Book 52, page 47, and page 66 of the German book.

THE COMMISSIONER: Mr. Newman, before you really commence your examination, I wish to say to the witness that: You should feel at liberty to testify very fully and freely, but it is the desire of the Tribunal that the testimony be as brief as possible, and so you are asked simply to answer the questions propounded to you and not to elaborate upon them. In case the answer is considered incomplete, you will be asked other questions by the counsel who is conducting the examination. That is all.

BY MR. NEWMAN:

Q Dr. Johan, now you have the German copies of the affidavits before you?

A Yes.

Q Did you recently discuss the contents of them with a representative of the Prosecution?

A Yes.

Q Is there anything you would like to correct or add as a supplemental concerning this affidavit?

A No, sir.

MR. NEWMAN: I have no further questions, Mr. Commissioner.

THE COMMISSIONER: The Defense may undertake the cross examination of this witness.

DR. VON METZLER: Dr. von Metzler.

THE COMMISSIONER: Will you state for whom you are speaking?

DR. VON METZLER: I am representing the defendant Paul Hoeflinger.

THE COMMISSIONER: You may proceed, Dr. von Metzler.

DR. VON METZLER: Mr. Commissioner, may I be permitted to be seated during this examination, because it will take quite a long time?

THE COMMISSIONER: By all means.

DR. VON METZLER: And I ask the same for my colleagues, if that will be agreeable to you.

THE COMMISSIONER: By all means. This is a rather informal proceeding, and I should be glad to have all of you gentlemen remain in your seats.

DR. VON METZLER: Thank you very much, Mr. Commissioner.

THE COMMISSIONER: You may proceed, Dr. von Metzler.

CROSS EXAMINATION

JOSEF JOHAM

BY DR. VON METZLER (for Shefflinger):

Q Dr. Joham, may I ask you first to answer a few questions of mine regarding your position in the Vorstand of the Creditanstalt. When did you become a member of the Vorstand of the Creditanstalt?

A In the year of 1931, during the course of the reorganization of the Creditanstalt.

THE COMMISSIONER: By all means.

DR. VON METZLER: And I ask the same for my colleagues, if that will be agreeable to you.

THE COMMISSIONER: By all means. This is a rather informal proceeding, and I should be glad to have all of you gentlemen remain in your seats.

DR. VON METZLER: Thank you very much, Mr. Commissioner.

THE COMMISSIONER: You may proceed, Dr. von Metzler.

CROSS EXAMINATION

JOSEF JOHAM

BY DR. VON METZLER (for Haeflinger):

Q Dr. Joham, may I ask you first to answer a few questions of mine regarding your position in the Vorstand of the Creditanstalt. When did you become a member of the Vorstand of the Creditanstalt?

A In the year of 1931, during the course of the reorganization of the Creditanstalt.

Q Since when did you take an active interest in the business affairs of the Skoda-Wetzlar Works in your capacity as a member of the Vorstand?

A Essentially only from that time when I became General Director of the Creditanstalt.

Q May I ask you when did you become General Director, Dr. Johan?

A In the middle of the year 1936.

Q May I further ask who was your predecessor?

A Mr. von Hengel.

Q When did Mr. von Hengel become General Director?

A I believe in the Spring of 1932.

Q And who was General Director before that time?

A Alexander von Spitzmuller for a short while.

Q Dr. Johan, you stated just now that you only became actively interested in the affairs of Skoda-Wetzlar when you became General Director of the Creditanstalt. However, did you have overall ideas about the development of the Skoda-Wetzlar Works before that time?

A Only insofar as those affairs had been dealt with in the Vorstand, before the assembled members.

Q Who of the body of the Vorstand dealt in the main with the affairs of the Skoda-Wetzlar Works before you became General Director?

A It was Counsellor Dr. Rottenberg who was Referent for the affairs of the Skoda-Wetzlar Works, and in such position he remained until March 1938.

Q Do you still remember when he became the Referent?

A I couldn't say that with certainty.

Q Did your predecessor, Dr. von Hengel, take an active part in the affairs of Skoda-Wetzlar?

A I couldn't say whether or not he took an active interest outside the Vorstand meetings and interfered directly with these affairs.

Q Did he in the meetings of the Vorstand speak rather frequently about the affairs of Skoda-Wetzlar so that you had reason to assume that he took an active interest in this corporation?

A I couldn't remember because there were too many affairs being dealt with.

Q Now, I want to ask you a few questions about the Vorstand of Skoda-Wetzlar. First, a preliminary question. Could you state to the Commission in which way the Creditanstalt took over the shares of Skoda-Wetzlar?

A As far as I remember, there was some participation in Skoda-Wetzlar already in 1931. Then Skoda-Wetzlar was built into the framework of the so-called Auslands-Gesellschaft, Foreign Corporation, and from this Auslands-Gesellschaft, Foreign Corporation, it was again taken over by the Creditanstalt. This may have taken place during the period from 1933 to 1935.

THE COMMISSIONER: Mr. Interpreter, as the witness testified, if he makes a statement which might tax your memory, stop him from time to time and translate what he has said and then go ahead.

THE INTERPRETER: I will do so.

BY DR. von METZLER:

Q If I understood you correctly, there was a substantial participation in Skoda-Wetzlar already before 1931. Was it the bundle of shares that later on was in possession of the Creditanstalt?

A I couldn't say whether it was the entire stock we held at that time, because I believe that there was a smaller amount of shares which we later on took over from the State, from the Ministry of Finance, but I can say that we possessed a major part of the stock.

Q To refresh your memory, may I mention one word, "Bankdrach." Wasn't it so that during and by this bank crash some of these stock shares got into your possession?

A Well, the bank crash wasn't really restricted just to one bank and to one institute, but beginning from 1926 until 1931 it affected

once the one institute and later on the other institute. It was really a string of events.

Q Herr Dr. Joham, who managed the Skoda-Wetzlar enterprise?

A It was the Vorstand of the corporation whose head and strongest personality was the Engineer Isidor Pollak.

Q May I ask, just to clarify things, was Mr. Pollak an Aryan?

A As far as I know, he was a non-Aryan.

Q Since when was Mr. Pollak the leading person of the enterprise do you remember?

A I couldn't specify a date, but I assume that on or about 1923 he certainly was there, and just about this period of time I got into closer contact with him.

Q Isn't it possible, Dr. Joham, that Engineer Pollak managed the enterprise already in the year 1927?

A I couldn't exclude the possibility, but perhaps Hofrat Rottenberg may give some more exact information on this point.

Q How did the gentlemen of the Creditanstalt judge Engineer Pollak in his position as the leading person in the management of Skoda-Wetzlar? You alluded to it already.

A He was an excellent expert who also was recognized beyond the boundaries of this country.

Q Dr. Joham, did he have any contact with the large concerns in the international field of the chemical sector?

A Without doubt.

Q Did I understand your statement correctly, so that I may assume that more frequently than not he conducted business negotiations with the great international concerns abroad?

A Whether it was exactly negotiations, I don't know. But, however, he kept up contact with these concerns.

Q And was his relationship with the gentlemen of the Creditanstalt a good one. And especially did the gentlemen of the Creditanstalt pay attention to and confidence in his advice?

A His conduct of business enjoyed the full confidence of the Creditanstalt.

Q Going over to the Skoda-Wetzlar Works themselves, I have a few questions about the position of Skoda-Wetzlar within the framework of Austrian Chemical industry. Dr. Johann, do you remember how many workers and business employees Skoda-Wetzlar employed, at an average?

A I couldn't tell.

Q Dr. Johann, can you, from your memory, use the most important chemical enterprises in Austria, apart from Skoda-Wetzlar?

MR. NEWMAN: Mr. Commissioner, I don't think there is any connection between this question and the affidavit.

THE COMMISSIONER: I will ask Dr. von Wetzlar to explain the connection that this has.

DR. VON WETZLAR: Well, Mr. Commissioner, maybe there is a connection with the affidavit of the witness because he states in the affidavit, as far as I can see -- I have only the German copy before me. Can I have the -- Thank you very much. The affidavit runs as follows: Paragraph 5 -- I beg your pardon, it is the first paragraph. "The powder-factory Skoda-Wetzlar A.G. was until 1938 the leading Austrian enterprise in the chemical industry."

The defense is also interested to clarify the situation and to examine the witness as to the other chemical enterprises in Austria.

THE COMMISSIONER: Very well, Dr., then I will ask you to state your question again.

BY DR. VON METZLER: Yes.

Q Now, Dr. Johan, you just heard what you say yourself in your affidavit about the position of Skoda-Wetzlar. Now, because I am interested in the position of the Skoda-Wetzlar within the framework of the entire Austrian chemical industry, I ask you what other chemical plants did then exist in Austria besides Skoda-Wetzlar?

THE COMMISSIONER: And you are objecting to that question on the ground that ---

MR. NEUMAN: No, I withdraw that objection.

THE COMMISSIONER: You withdraw it.

You may answer.

A What we regard as Austrian industries are those works and plants which are also Austrian owned. Part of the Austrian chemical plants were owned by foreign corporations.

Q Could you give us the names of some of the plants of the chemical industry in Austria, from your memory?

A Wagemann-Seidel, which was affiliated to Skoda-Wetzlar.

Q Pardon me if I interrupt you. I only am interested in plants outside of the Skoda-Wetzlar complex.

A Of plants which were Austrian owned, I know not one which in importance was equal to Skoda-Wetzlar.

Q Just to refresh your memory, may I submit to you the following: Do you know the Carbide Works Deutsch-Matrei, together with the plants Landeck, Bruckol, and the third plant, Deutsch-Matrei?

THE COMMISSIONER: Now, just a moment please. I am wondering if the Court reporters are able to get these proper names. Perhaps you had better give them a little more time when you mention proper names so they

can make a complete record.

DR. VON METZLER: May I then repeat my question slowly? Could that be agreeable?

THE COMMISSIONER: That is perfectly satisfactory.

BY DR. VON METZLER:

Q Dr. Johan, may I submit to you the Carbide Works Deutsch-Matrei, together with the plants Landeck, Bruckel and Deutsch-Matrei itself? Was it not an important enterprise?

A Yes, I know that plant, but as far as I know it was not Austrian owned.

Q But you don't know any exact details about this? I ask you whether you know any exact details about it.

A No.

Q Then, in this connection, I would like to submit to you inquiries about another Austrian enterprise, the Dynamite-Nobel A.G. with the plant in St. Lambrecht. Wasn't it an important enterprise in the field of chemical industry in Austria?

A It wasn't quite without importance, but although the name of the firm was Austrian Works So and So, it was not, however, an Austrian owned plant as far as I know.

Q Dr. Johan, do you know who was in the management of this last named enterprise?

A No, I don't.

Q May I refresh your memory? Was it Dr. Phillip?

A Quite possibly.

Q You never had anything to do with Mr. Phillip?

A I don't remember any business contacts with him.

Q I would like to submit to you the name of a further enterprise -- Kreidel, Heller and Company. Do you remember this enterprise?

A Well, I remember that enterprise. As far as I know, it was owned by non-Aryans and later on was organized. I don't remember exactly

who the man was who took it over. It was an SS man, and I think he was Fridolin Glass.

Q Dr. Johan, I am now interested in the period before 1938. Please confine your answers to that period. Do you know anything about the importance of the enterprise I referred to just now -- Kreidel, Heller & Company?

A I think it played some role within the saccharine industry, the saccharine syndicate.

Q May I call to your attention a further enterprise of the chemical industry, Chemische-Werke -- Chemical Works Traibach? Do you know this enterprise and can you tell us something about the importance of it?

A I know this enterprise and certainly it was not without importance.

Q Then, as a further chemical enterprise, I would like to submit to you the name of the Bleiburger, Bergwerks-Union A.G., Bleiberg Mining Company, with its seat in Klagenfurth, with a chemical factory attached to it in Arnoldstein. Can you tell the Tribunal anything about the importance of this enterprise?

A Certainly it played a certain role in the chemical field, but not in the field where Skoda-Wetzlar was active.

Q Following up my question, may I ask you which was the field of activity of Skoda-Wetzlar?

A First of all, the production of sulphuric acid, and sodium chlorid acid and some other chemical products.

Q But the main production was sulphuric acid?

A Yes.

Q I know, certainly, you are not a chemist, but may I ask you this question: Do you know the term heavy chemicals, as a special field of chemistry, or don't you?

A Well, I know the expression. I know the term.

Q Are these two chemicals you mentioned just now heavy chemicals?

A Well, I am afraid this is a question which ought to be directed to an expert but not to a witness.

Q I apologize. I thought perhaps you might know something about it, since not being a chemist you knew that term heavy chemicals, but since it appears to be a special question, I will drop it. May I understand you then, Dr. Jolm, to state that the activity of Skoda-Letzler in the field of heavy chemicals was leading as far as this special field is concerned?

A Yes, it's correct.

Q Now, to follow up my question: Therefore there were other important chemical enterprises in Austria apart from Skoda-Letzler, in other sectors of the chemical field?

A That's correct, yes.

Q Now, just to conclude this chapter, I would like to submit to you the names of three other enterprises -- the Ebensee-Solvay Works. Do you know this enterprise and can you tell us something about the importance of this enterprise?

A Well, it was an enterprise belonging to the complex of the Solvay group and consequently, on account of its relationship to the Solvay group, it was not without importance.

Q Now, to go along, may I call your attention to the name of the Lodenburg Super-Phosphate Works. Do you remember this enterprise and can you tell us something about it?

A I have only a superficial knowledge of it and, in addition, I don't know whether the Works were inside Austrian territory.

THE COMMISSIONER: Just a moment now, Dr. von Metzler, I would like to know how this line of cross examination comes within the scope of the affidavit.

DR. VON METZLER: Well, Mr. Commissioner, the Defense, of course, is interested to know what the witness means by the expression in his affidavit, "the leading chemical enterprise of Austria" -- "Skoda-Wetzler, the leading chemical enterprise of Austria", and therefore we are interested to clarify the situation and to hear from the witness which further important chemical plants outside the scope -- the framework of Skoda-Wetzler, were seated in Austria; and that is the purpose of my cross examination. And I may add, Mr. Commissioner, that there is only one enterprise left which I want to put to the witness, and then I have --

THE COMMISSIONER: You have exhausted the subject?

DR. VON METZLER: Yes.

THE COMMISSIONER: If you have only one more question along this line, you may proceed, but I think that you have just about exhausted the proof on this point. I will permit you to conclude.

BY DR. VON METZLER:

Q. Thank you.

As the last enterprise in this connection, I would like to submit to you the Semperit Works. Can you tell the Commission anything about the importance of this enterprise?

A. Semperit belonged to the concern of the Creditanstalt.

Q. Was it an important plant?

A. It was and is an important enterprise, but equally it belongs to another sector; it belongs to another level, and again I must repeat....

THE COMMISSIONER: The question has been answered.

BY DR. VON METZLER:

Q. Now I come to something else. Now, Witness, the Defense is interested to hear from you which special position -- which particular

situation prevailed in the Austrian chemical market before 1938, and I ask this question because I am interested in knowing what relationships there were between the Austrian chemical industry and allied industries in other countries who, after all, were in a certain way competitors of this Austrian industry.

MR. LEWIS: I think this question is so general that we can not judge what it is aiming at.

THE COMMISSIONER: I will ask you, Dr. von Metzler, to ask this question in a more simple form.

BY DR. VON METZLER:

I will, Mr. Commissioner.

Q. Dr. Johan, I would like to ask you whether or not the products of Austrian chemical industries were, before 1938, protected by high tariffs from foreign competition?

A. There was a protective tariff for chemical products.

MR. VON METZLER: I beg your pardon, Mr. Commissioner, I just wanted to correct my last answer on the next question.

THE COMMISSIONER: Would you like a brief recess?

DR. VON METZLER: No, sir.

THE COMMISSIONER: Very well.

Just a moment, Dr. von Metzler, it would be -- I think it would be to the interest of all Counsel if, when you changed the subject on which you are interrogating the witness, you would indicate what part of the affidavit was involved, if you could do so.

DR. VON METZLER: Yes. Well, in some cases it is rather difficult because I am trying to put a certain amount of questions to the witness in order to bring him to a certain point and therefore it is for me rather awkward to state beforehand --

THE COMMISSIONER: I am aware of your difficulties. I am aware that you have difficulties along that line and I don't wish to be other than liberal, but, as you know, the Tribunal desires that this record be not overburdened with irrelevant material, and I wish to be able to follow your examination within the framework of the affidavit.

DR. VON METZLER: May I proceed, sir?

THE COMMISSIONER: You may proceed.

BY DR. VON METZLER:

Q. Dr. Johan, you stated just now that Austrian chemical industry was protected by tariffs against foreign competition. Did this state of affairs cease after Austria and Germany became one country in 1938?

A. Yes.

Q. Now let's go on to another subject. Herr Dr. Johan, do you know anything about the Anilin-Chemie A. G., which was active with the sale of chemical products in Austria?

A. Yes.

Q. Do you know who was the owner of this Anilin-Chemie A. G.?

A. As far as I remember, it was the property of one Mr. Roth, I believe. Or at least Mr. Roth participated in it, unless I am mistaken.

Q. Dr. Johan, I think you made a mistake and confused things. Don't you know that this enterprise was the property of I. G. Farben?

MR. NEWMAN: I would like to know how this question is connected with the affidavit.

THE COMMISSIONER: Will you please explain that, Dr. von Metzler?

DR. VON METZLER: Yes. The connection is the following: This firm Anilin-Chemie A. G., which was owned by I. G. Farben, was an important factor in the whole Skoda-Metzler transaction.

MR. NEWMAN: That is not from the affidavit.

DR. VON METZLER: Well, but, Mr. Commissioner, I think that if you will permit me to put further questions in this direction, then it will become clear --

THE COMMISSIONER: I will ask you, Dr. von Metzler, to what does that refer? The rule on this matter is simple. If the material

is within the framework of the affidavit, then counsel may interrogate the witness. If it is not, then you are out of luck.

DR. VON MERTZLER: Mr. Commissioner, it is within the framework of paragraph 6 of the first page of the affidavit. "At this stage as Generaldirektor of the Creditanstalt I had to deal with the question of whether the Creditanstalt was willing to give up the majority of Ekoda-Wetalar A. G. to I. G. Farben. I rejected the idea as a matter of principle. That must have been in 1937." Now, this firm, Anilin-Chemie A. G., which was owned by I. G. Farben, was in a way representing I. G. with negotiations with regard to this transaction. Therefore, I think it will be within the framework of the affidavit.

MR. NICHOLS: I think, Mr. Commissioner, we are going a long way around in order to get to a point which might be possibly loosely connected with this affidavit and I think we could save time if questions were more directly to the point in which we are interested.

DR. VON MERTZLER: Well, may I reply to this, Mr. Commissioner, that I put to the witness a direct question — whether he knows this firm, Anilin-Chemie, was owned by I. G.?

THE COMMISSIONER: That question was easily answered. I would relax the rule sufficiently on a question of that kind where the answer is simply "yes" or "no", so as to allow the question to stand. The witness may answer the question "yes" or "no" — does he know?

BY DR. VON METZLER: May I repeat the question?

Q. Dr. Jehan, do you know whether or not Anilin-Chemie was I. G. Farben owned, before 1938?

THE COMMISSIONER: You may answer that, Mr. Witness, "yes" or "no".

THE WITNESS: Unfortunately there are questions which you can't answer with "yes" or "no".

THE COMMISSIONER: The question is simply whether or not you know.

A. Well, this way I have to answer "no". But if I may give an explanation, then perhaps we might approach the subject a little closer. As far as I remember, there was some change in the ownership of Anilin-Chemie A. G. I know equally that there was some participation in the enterprise on the part of the Roth family and at some time it passed into the ownership of I. G. Farben, but I couldn't state when.

BY DR. VON METZLER:

Q. In this connection, you mentioned the name of Mr. Roth. Do you know whether or not Mr. Roth was the leading figure within the enterprise exactly after this change of ownership you mentioned, until the year 1938?

THE COMMISSIONER: Now, Mr. Witness, that question is like the other one and calls for an answer "yes" or "no".

THE WITNESS: No.

THE COMMISSIONER: He doesn't know.

BY DR. VON METZLER:

Q. Well, therefore, may I ask: You don't know anything therefore about conversations or negotiations between Mr. Roth for Anilin-Chemie on the one hand and Engineer Pollak for Skoda-Wetzlar on the other hand?

A. No, I don't.

Q. You don't know anything about a good relationship between these two gentlemen?

A. No.

Q. Now let me pass to another subject, Witness. I would like to ask you how the purchase of Skoda-Wetzlar by I. G. Farben was effected after the Anschluss. I would like to ask a few short concise questions — Oh, I beg your pardon.

THE COMMISSIONER: Before you go to another subject, it is now time for our customary recess in the morning, and I think we will break off here. So, this examination will recess for 10 minutes.

(A recess was taken)

THE MARSHAL: The Commission is again in session.

THE COMMISSIONER: You may proceed, Dr. von Metzler.

CROSS EXAMINATION (Continued)

JOSEF JOHAN

BY DR. VON METZLER (for Haeflinger): Continued

Q. Immediately before the recess I announced a few questions I am going to direct to you in connection with the purchase of the Skoda-Wetzlar shares by I. G. Farben after the Anschluss. Did Farben — or, to say it more correctly, the gentlemen who conducted the negotiations on behalf of I. G. Farben exert any direct pressure on the Creditanstalt which prompted the Creditanstalt to sell these shares to Farben?

THE COMMISSIONER: That question can be answered again by the single word, "yes" or "no".

THE WITNESS: No.

BY DR. VON METZLER:

Q. Now, may I be permitted to ask further questions — in paragraph 2 on page 2, original page 2 of your affidavit, Exhibit 1067, you stated and I quote: "After the annexation of Austria by Germany in March 1938 an entirely new situation naturally developed for the enterprise, owing to the fact that it was no longer the will of its owner which decided its fate but that of state controlled economy."

Now I further quote: "Enterprises and their owners, and this applies to the Creditanstalt, were no longer free in their decisions but were bound by the orders and recommendations of party and state economic advisers." Now, to follow up your statements, Dr. Johan, I ask you: Did Farben exercise any direct pressure on the Creditanstalt through other agencies which prompted it to sell or otherwise relinquish its possession of stock? To conclude my question, are any facts known to you in these connections?

A. I can not, and I could not, state whether or not any gentlemen of the I. G. took a direct influence in exercising any indirect pressure, but, we were under pressure and only under this pressure we saw ourselves compelled to sell our stock.

Q. Dr. Johan, was it not the general trend of development in those days -- not at least the economic development -- of such a nature that you found yourselves in a situation of duress?

A. It certainly played some part.

Q. Let me start on another subject, which, however, is in some connection with the preceding subject and is especially referring to my client, Paul Haeffliger. Do you, Dr. Johan, remember a conversation between yourself and my client, Paul Haeffliger, immediately after the Anschluss?

A. Yes, I do.

Q. Do you still remember how it came to this conversation?

A. As far as I remember, it took place on the initiative of Mr. Pollak, Isidor Pollak.

Q. Witness, do you still remember any details of this conversation with Mr. Haeffliger?

A. No. Only in an overall way.

Q. Did you subsequently negotiate with Paul Haeffliger about the complex of Skoda-Wetzlar?

A. As far as I remember, I did not negotiate again with Paul Haeffliger.

DR. VON WETZLER: And that ends my cross examination

DR. NATH: May I continue? Dr. Nath for Dr. Ilgner.

THE COMMISSIONER: You may continue, Dr. Nath.

CROSS EXAMINATION (Continued)

JOSEF JOHAN

BY DR. NATH (for Ilgner):

Q. Dr. Johan, a while ago you stated that Engineer Pollak had either an influential or a leading part in managing the Skoda-Wetzler enterprise. Do you remember that in 1927, and I believe it was October, Engineer Pollak was in Frankfurt and talked to Mr. Schmitz of the I. G. Farben and do you remember further that on this occasion Engineer Pollak offered to Geheimrat Schmitz, that is to Farben, a far-reaching support on the part of Skoda-Wetzler?

A. No.

Q. Who at that time was the leading and decisive gentleman in the Creditanstalt?

A. I believe Herr von Neurath. He was President of the directing body at that time — of the managing body.

Q. Do you still remember, Dr. Johan, that in 1936 representatives of the Aussig-Solvay Group directly negotiated with the Austrian Creditanstalt about the purchase of 86 per cent of the Skoda-Wetzler stock?

A. I don't remember.

Q. Can you tell the Commission what sort of a group this was — Aussig-Solvay? Was it an Austrian group or a foreign group?

A The Aussig-Chemie was a large enterprise of the Czech group -- of the Bohemian group.

Q Dr. Johann, do you remember that on this occasion Farben asked to acquire an option to those 86 percent of the shares from the Creditanstalt for a term of two years and that in this connection the Creditanstalt refused this option with the remark I.G. Farben had to make up their minds immediately with consideration to pending negotiations with Aussig-Solvay?

A I don't remember that.

Q Does it refresh your memory if I submit to you that on behalf of Farben, Mr. Roth, whom you mentioned before together with Dr. Phillip, made an offer to the Creditanstalt to take over that 86% of the shares for 3,000,000 marks, and that was in 1936?

A I don't remember the details because I did not conduct the negotiations myself, but I do remember that already at this time I.G. Farben tried to acquire the majority in Skoda-Wetzlar.

Q Dr. Johann, do you remember who, that is on the part of the Austrians, took the initiative? Was it that way that Skoda-Wetzlar tried to establish contact with Farben with an eye in this direction?

A No.

Q Dr. Johann, may I put it to you that in 1936 Dr. Doncker, of the Central Bookkeeping Department of I.G. Farben, was in Moosbierbaum in order to look over the balance sheets of Skoda-Wetzlar of 1936 and probably also of 1935 and that this happened in connection with the discussions between Farben and Skoda-Wetzlar?

A I have no knowledge of that and I don't know the name of Doncker at all.

Q Dr. Johann, do you remember that immediately before the Anschluss there were negotiations between I.G. Farben and Skoda-Wetzlar and also the Creditanstalt, of which negotiations one can say what they were immediately before a conclusion? When asking this question, I don't

want to discuss they wanted to acquire a majority of the stock or at least a guaranteed minority of it.

A Yes, I do.

Q Dr. Joham, another question. Can you tell us approximately how high the stock exchange quotation was of the Skoda-Wetzlar in the year of 1932?

A No.

Q Would it be correct if I say that the stock exchange quotation at that time was about 10 percent of the nominal value?

A I have no basis for such a statement.

Q Do you remember Dr. Joham, what was the stock exchange quotation of the shares in 1938? Would it be correct if I say, just in order to support your memory, that at that time the quotation was about 150 percent of the nominal value?

A It is not possible at all to talk of quotations at that time because the shares were closely held and there was neither a demand nor an offer on the market?

Q Would the quotation as I have stated it --

THE COMMISSIONER: Just a minute. You finish the translation, if you please. Finish the translation of that question, please.

THE INTERPRETER: Would the quotation I mentioned just now correspond to a quotation in the free market?

THE COMMISSIONER: Now I am going to ask you before the witness answers. That question, Dr. Rath, how does that bear on the affidavit the witness has prepared and on which he is being cross examined? I mean I've got lost on it.

DR. RATH: May I refer to page 3. In the last paragraph of my German copy they speak about the amount of the purchase price --

MR. NEWMAN: This in the English copy, in the last paragraph on page 3. The last page -- at least with respect to the purchase price.

THE COMMISSIONER: The last paragraph on page 3, you say?

MR. NEWMAN: The last completed paragraph on this page, at least with respect to the purchase price. Page 3 of the English stencil.

THE COMMISSIONER: All right. Where you have marked it, is it?

MR. NEWMAN: Yes.

THE COMMISSIONER: Thank you. You may proceed, Dr.

BY DR. NATH:

Q Do you still remember the question?

A Yes. Since there were neither sales nor purchases of the stock you can't talk of a free quotation.

DR. NATH: May I just have a brief conference with my colleagues in order to determine whether this is to be the last question of my cross examination?

Q One more question. If I may ask you to answer it. Dr. Johan, were you still present at the final negotiations about the purchase price or did some other gentlemen conduct those negotiations?

A I was no longer present. The final negotiations were conducted by Dr. Pfeiffer.

DR. NATH: No further questions.

THE COMMISSIONER: Has the Defense any further examination?

DR. BOETTCHER: I have no further questions since my two brethren exhausted the subject.

THE COMMISSIONER: Dr. Boettcher represents defendant Krach?

DR. BOETTCHER: Yes, Krach.

THE COMMISSIONER: Is there any redirect?

MR. NEWMAN: Yes, sir.

REDIRECT EXAMINATION

JOSEF JOHAN

BY MR. NEWMAN:

Q Dr. Johan, did you answer "no" to the question whether Farben's representative used direct pressure?

A Yes.

Q My question in this connection is: Did you feel perfectly free after March 12, 1938, the so-called Anschluss, as you did before to reject Farben's offer?

A No.

Q Did Farben's Guenther-Schiller at that time in a letter to Creditanstalt refer to the fact that the Koppler office was pleased that Guenther Schiller was appointed manager of Skoda-Wetzlar, as the letter puts it?

DR. von METZLER: Excuse me, Mr. Commissioner, —

MR. NEWMAN: I refer to the German testimony.

DR. von METZLER: I object to this question. I don't see a direct connection with the cross examination.

THE COMMISSIONER: Well, Dr. Newman, state for the record how this is connected.

MR. NEWMAN: The witness in direct examination was examined about the pressure used against Creditanstalt. The exclusive purpose of my question is to have the witness specify on his answer —

THE COMMISSIONER: The witness may answer.

BY MR. NEWMAN:

A I know that there was a letter and that in this letter the Koppler Office was mentioned.

Q Was at that time or about this time Raffallberger appointed a member of the Supervisory Board of Creditanstalt?

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A. As far as I know, he was appointed a member of the Supervisory Board at a time a little later on than that, but already at that time he was decisive as some sort of economic advisor or Kommissar for Economic Divisions.

Q. Did you know at the time that Neubacher, Vienna's newly appointed mayor, was on excellent terms with I.G. Farben?

THE COMMISSIONER: That question takes the "Yes" or "no" rule. The witness is simply asked if he knows.

THE WITNESS: Yes.

BY MR. NEWMAN:

Q. Dr. Johan, you said something about the negotiations after the Anschluss concerning Farben's acquisition of Skoda-Wetzlar shares. Were there any negotiations at all deserving this name after April 1938 in which you participated? Or were you replaced at that time by Mr. Pfeiffer?

A. Yes.

DR. VON METZLER: I object to the term "negotiations which deserve the name."

THE COMMISSIONER: Do you wish to reframe your question, Counsel?
BY MR. NEWMAN:

Q. Do you think the discussions which took place or which might have taken place between I. G. Farben and the Creditanstalt after April 1938 were really negotiations?

DR. VON METZLER: I still object to this question, Mr. Commissioner.

THE COMMISSIONER: What is your objection?

DR. VON METZLER: Because I don't think the witness can answer this question directly. I mean the Prosecutor must be more explicit.

THE COMMISSIONER: I think ---

DR. VON METZLER: And then he, Mr. Prosecutor, is putting a leading question. I don't think --

MR. NEWMAN: The question can clearly be answered by simply "yes"

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or "no" -- whether they were genuine and real negotiations between Farban and Creditanstalt. I don't see anything leading.

THE COMMISSIONER: Mr. Newman, I would -- It seems to me that it would be advisable for you to phrase your question so as to require the witness to come to a conclusion as to whether or not the negotiations were legally valid or whether or not they were real or spurious. If you ask him whether or not there were negotiations, then you may ask him almost any question in regard to the negotiations.

BY MR. NEWMAN:

Q. Do you know, Dr. Johann, of any negotiations between Mr. Pfeiffer and I.G. Farben in which Mr. Pfeiffer tried to get the best possible terms for Creditanstalt?

A. Yes, I do.

Q. You mean, Mr. -- I don't know whether we understood each other. You mean Mr. Pfeiffer tried to get the best terms from I.G. Farben concerning this Skoda-Wetzlar deal?

A. Yes, I think so.

Q. Is it true, Dr. Johann, that you tried to retain for Creditanstalt at least a minority of the Skoda-Wetzlar shares even after March 12, 1938?

A. Yes.

Q. Do you happen to know what has become of this point when Mr. Pfeiffer took over?

A. We found ourselves in a different situation and naturally were exposed to pressure by Party and Government agencies even as far as the conditions of the contract were concerned. The direct negotiations were conducted by Mr. Pfeiffer and how far during these negotiations there was any deviation from the general line, I personally do not know.

Q. Can you briefly describe Mr. Pfeiffer's position before and after the Anschluss?

DR. VON LETZLER: I object. I don't see any direct connection

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with the scope of —

THE COMMISSIONER: I completely lost the question.

A. KILIAN: The witness in direct examination was asked about the negotiations after March 12, 1938. What I am asking at, Mr. Commissioner, is to show or to ask the witness whether the negotiations after March 12th were no longer in his hands but in the hands of Dr. Pfeiffer and in this connection I think that the position Dr. Pfeiffer held is important.

MR. KILIAN: The Prosecutor asked the witness which position Dr. Pfeiffer held before the Anschluss, and I don't see that there is any importance attached to this question because it might interest the Court to know which position Dr. Pfeiffer held after the Anschluss, but I don't see any connection with the examination in regard to the position he held before 1938.

MR. KILIAN: In order to properly evaluate Dr. Pfeiffer's attitude and position after March 12th, 1938, it is important to know what his attitude before this time was and why he was appointed to this latter position.

THE COMMISSIONER: I think Counsel on both sides have thoroughly explained their position. The witness may now answer the question.

... Pfeiffer was an official to the Secretary of the Creditanstalt before the Anschluss and after the Anschluss he became a member of the Vorstand.

THE COMMISSIONER: You may proceed, Dr. Kilian.

A. KILIAN:

Q. Did he become a member of the Vorstand for the Creditanstalt in connection with his known Nazi sympathy?

... Yes.

Q. Thank you. Now, you were asked whether before the Anschluss negotiations between Schock-stiller and Creditanstalt — between I.G. Farben and Creditanstalt had almost ripened into a conflict. Defense Counsel left the question open whether these negotiations at that time were aiming at Farben's acquiring a majority or just a minority in

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Skoda-Wetzlar. Please tell us now whether or not it is true that the
the Anschluss Creditanstalt distinctly rejected Forban's offer to acquire
the majority in Skoda-Wetzlar?

... Yes.

DR. HINDORF: Thank you, Mr. Commissioner. I have no further
questions.

THE COMMISSIONER: Have you?

DR. HINDORF: May I suggest to have our own recess now, since
I would like to confer with my colleagues whether or not we have to ask
any further questions following the redirect of the Prosecution.

THE COMMISSIONER: For the convenience of the witness, it would
be well if we could arrive at that conclusion before recessing, for this
reason: that if you have further cross examination, then of course the
witness must return, but if you have no recess examination, then we
may excuse him at this time.

DR. HINDORF: We intend to have a recess examination at any
rate, only now we want to confer in the interests of conserving time.

THE COMMISSIONER: Well, if it is settled that you do intend to
interrogate the witness further, I will grant your request.

DR. HINDORF: Yes.

THE COMMISSIONER: In that case, this hearing will be recessed
until 1:30 today.

(A recess was taken until 1:30 p.m.)

THE CLERK: The Commission is again in session.

THE COMMISSIONER: You may proceed. Does the Prosecution have
anything to present before we proceed?

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MR. HESTER: No, sir.

THE COMMISSIONER: Dr. Bontcher, do you wish to say anything.

DR. BONTCHER: No, sir.

THE COMMISSIONER: Dr. Bontcher, do you wish to continue the witness at this time?

DR. BONTCHER: Dr. von Metzler is taking over the job.

THE COMMISSIONER: Oh, I see. You may proceed, Dr. von Metzler.

RECORDS IN DISCUSSION

JOSEF JOHAN

BY DR. VON METZLER:

Q. Dr. Johan, I would like to come back to the negotiations which have been conducted between I.G. Farben and Creditanstalt and Stock-Netzer immediately before and immediately after the Anschluss about the acquisition of the shares. In this connection, I would like to submit to you some correspondence which shortly before the Anschluss took place between I.G. Farben and Stock-Netzer, and of which some copies went to the Creditanstalt as well. The letters are from January and February 1938. In this connection, I would like to quote First Prosecution Exhibit 1060, which is to be found in Document Book 52, English, page 30; German, page 36. This is a letter from Stock-Netzer to I.G. Farben which bears the signature of Engineer Fellak, of which a copy went to the Creditanstalt; it is dated January 5, 1938. I quote: "Dear Herr Direktor: In accordance with our agreement, I take the liberty of sending you the following on the result of my conferences with General Direktor Johan. We discussed the whole matter very thoroughly and have paid special attention to all arguments which you advanced. The advantages which would result for us from collaboration with I. G. Farben industry, were considered by all of us to be a valuable asset. For reasons over which we have no control, it is not possible for us to depart from our standpoint that it is absolutely essential for the Creditanstalt to keep 51 percent of the shares in its strict control.

On principle, however, we are prepared in the form of an agreement to the guarantees which you would be justified in claiming for the protection of the industrial interests. We have for the rest still the firm intention to settle the affair in the way explained to you here by General Direktor Johann and by myself. We are sorry that we can not explain in more detail in an ordinary letter how much all of us appreciate your efforts in this connection and how hard we are all trying to obtain the consummation of the project concerned. But in spite of the best intentions Creditanstalt can not make any further concessions in the matter of control. I hope, dear Herr Ministerialrat, that you will be able to accommodate yourself to the standpoint of Creditanstalt, and I am with my best regards,
Yours very truly -- Follok's signature, and of gusto.

Do you remember this letter, Dr. Johann?

A. It is not immediately present to my memory, but it is very well possible that such a correspondence took place, because, after all, I didn't write it myself.

Q. However, the letter recounts a conversation which took place about this project between yourself and Direktor Follok.

A. Yes, I believe, however, the letter contains more polite forms than it contains matters of fact. The facts are, and I think this is the essential point, that the Creditanstalt wanted to keep a firm hold on 51 percent of the shares, under all conditions.

MR. NEWMAN: There is a mistake in the translation, and I would like to have the first part of the phrase read to the interpreter.

THE COMMISSIONER: Very well.

THE INTERPRETER: I believe there was more politeness expressed in that letter which concerned matters of fact.

MR. NEWMAN: That's all right.

BY DR. VON METZLER:

Q. Isn't it clear from the letter that on the part of the Creditanstalt there existed a desire to come to an agreement with Farben

concerning the organization of shares of Skoda-Wetzlar?

THE COMMISSIONER: Don't answer until the Counsel has been heard.

MR. NEWMAN: I think, Mr. Commissioner, that that letter is part of the document which is part of our Document Book, that it speaks for itself, and there is no necessity for the witness to interpret the letter.

DR. VON METZLER: Mr. Commissioner, I had the impression that the witness just said this letter was a mere letter of politeness and therefore I am interested to put this question to him whether this letter expressed the wish of Skoda-Wetzlar and Creditanstalt that I.G. come into an arrangement with Skoda-Wetzlar.

THE COMMISSIONER: The point you are making, then, Dr. Metzler, is that the witness, having already given a conclusion as to the meaning of the letter and that you may elicit from him further conclusions.

DR. VON METZLER: Exactly, Mr. Commissioner.

THE COMMISSIONER: I think that, upon objection, a conclusion of the witness as to the effect of the letter, which is in the files as part of the exhibits, would not be admissible. That one conclusion has been offered in testimony, it seems to me, would not justify questioning him as to another conclusion. It seems to me that the objection as to the witness' drawing a conclusion now being admissible is a good objection.

BY DR. VON METZLER:

Q. Then I would further like to submit to you Exhibit 1061, contained in the English Document Book 52 on page 32. It is a letter of the 20th of January 1936. I quote....

MR. NEWMAN: Just a moment. May I suggest, Mr. Commissioner, since this letter also is part of our Document Book, that we won't have the trouble of burdening the record with reading this letter again. The witness himself can read the letter as it is.

THE COMMISSIONER: The question apparently is put for the purpose of impeaching the credibility of the witness. For that purpose, it is proper, but the letter itself is already in evidence. Now, Counsel may

examine the witness as to anything in the letter and he may not ask the witness as to his conclusions.

DR. VON MEYER: Yes, sir. I would like -- The purpose of my putting this letter further before the witness is to refresh his memory as to the negotiations which took place shortly before the Anschluss. Therefore, I think it is essential to read this letter to the witness.

MR. NEAL: To put the record straight, I do not object to the witness' reading this letter. I only feel that there is no necessity for burdening the record by having this letter read here again.

THE COMMISSIONER: I agree with you. I don't think this letter needs to be or should be read into the record, but you may examine the witnesses to any point in the letter.

DR. VON MEYER: Then I would ask to be permitted to show the letter to the witness, because --

THE COMMISSIONER: You may do that. That is proper.

Q. May I ask you, witness, to read this letter?

(Witness read the letter.)

Q. In order to complete the picture, I would like to submit to the witness another document which is Exhibit 1069, contained in English Document Book 52.

on page 37, and after the witness has read this letter, which is the reply by Skoda-Wetzlar, I will permit myself to ask further questions.

THE COMMISSIONER: That will be proper.

BY DR. VON METZLER:

Q Did the events of that time immediately before the Anschluss which comprised the negotiations concerning the acquisition of the Skoda-Wetzlar shares come back to your mind after you have read this letter?

A As far as it throws any further light on the matter, yes.

Q Now, precisely, were the negotiations between Farben and Creditanstalt, about the purchase of Skoda-Wetzlar shares in the last stage of being concluded before the Anschluss?

A As the correspondence shows, the negotiations took place between Buhl and Pollak, that is, essentially not with the Creditanstalt. However, the Creditanstalt would not have objected to selling a minority of the Skoda-Wetzlar stock under certain conditions, however.

Q Witness, I now refer to the time after the Anschluss. During this morning's cross examination you answered to one of my questions that the Austrian protective tariffs protected the Skoda-Wetzlar products from foreign competition. Now I would like to submit to you a letter from the Creditanstalt directed to Mr. Werner Lemke of the Office of Chief of Counsel for War Crimes, dated 31st May 1947. This was Prosecution Exhibit 1086, is to be found in Document Book 53, English, page 55, but if I remember correctly, it was not submitted by the Prosecution but during the course of the proceedings, had been withdrawn by them. Therefore, in order to play safe I want to submit it now as Exhibit Haeffliger Number 1 for identification only.

THE COMMISSIONER: You may have it entered for identification. As whose exhibit?

DR. VON METZLER: Haeffliger Number 1.

THE COMMISSIONER: Haeffliger Number 1?

DR. VON METZLER: Yes.

Q Dr. Johan, I merely want to read to you one sentence from this letter. It is to be found on page 2. It is the conclusion of paragraph 2 of the letter. It will need no further --

THE COMMISSIONER: Before you ask your question, let the exhibit be marked for identification by the Clerk. That will be Haeffliger Number 1. You will mark that Haeffliger Number 1, please, for identification. Make the marking very distinct so you will recognize it again.

MR. WAGNER: Yes, certainly.

THE COMMISSIONER: Perhaps you had better put some initials on it or something of that sort.

MR. WAGNER: Yes, certainly.

Q "It also will need no further proof that Austrian industry, as soon as it was compelled to work on the territory of the German Reich would seem from a purely industrial standpoint to have had no possibility to resist successfully the superior power of German industry." Now, Mr. Witness, I want to ask you this: Didn't the Creditanstalt aware that after the Anschluss and after the high protective tariffs had been eliminated the economic situation of the Skoda-Wetzlar Works would experience a very marked deterioration?

A Just with regard to Skoda-Wetzlar, I don't think that the same danger existed in this respect as it existed with respect to other countries since there were concern agreements about the markets.

Q Now can you explain, then, that remark contained in this letter which originates from the Creditanstalt itself?

A Because, generally, this remark originated from the view taken on the situation of Austrian industry and certain difficulties as they developed from the Anschluss.

Q Now, another subject, Dr. Johan, during your redirect examination you were asked about a letter from Mr. Schiller in which the Keppler Office was mentioned. Now, in this connection, I ask you, do you know that after the Anschluss there were immediately measures taken by legal acts, to protect

Austrian industry from that I may term alienation?

A. It is correct that such a decree was issued I don't know then, but it had no effect whatsoever because neither the Party nor the government agencies paid any heed to it.

Q. One preliminary question, Mr. Witness. Do you still remember the contents of this legal act?

A. As far as I remember, it was provided that the organization of Austrian enterprises by German nationals was not possible except under certain conditions.

Q. Now, I ask you if Farben wanted to bring the negotiations with Skoda-Wetzlar to a final, successful conclusion, would Farben have been compelled to get such an official approval?

A. Yes, that's correct.

Q. Do you still remember whether or not the Koppler Office was the agency who was charged to give such approval?

A. As far as I remember, that approval had to be given by the Ministry of Commerce, which still existed at that time and was headed by a Minister of Commerce, and the activity of Koppler and Vasseneier at that time was not a legal one.

Q. Mr. Witness, do you have exact knowledge about the jurisdiction of the Government agencies in Austria at that time?

MR. HENMAN: I think, Mr. Commissioner, we are getting farther and farther from the redirect examination.

BY MR. VON METZLER: This is my last question.

THE COMMISSIONER: These questions definitely have called for a conclusion by the witness. That is my opinion. I think they are improper. I think perhaps you can phrase your question in some other way, but these last two questions, in my mind, have been calling for a conclusion of the witness.

MR. VON METZLER: Well, with due respect, Mr. Commissioner, I think that my question as to whether the witness is familiar with the jurisdiction

of the authorities in Austria who were -- who had to handle this authorization for acquisition of Austrian property by German firms, that this question pertains to his direct knowledge of this point and not to any conclusions to be drawn from other facts. So, may I repeat this question, or are you --

THE COMMISSIONER: Yes, repeat the question.

Q Mr. Witness, do you have exact knowledge about the jurisdiction of the authorities at that time whose task it was to permit the acquisition of Austrian property by Germans?

THE COMMISSIONER: Now, the witness may answer that question by a simple "yes" or "no" because what he has been asked is "did he have knowledge"?

THE WITNESS: I recognize that the Tribunal requires to have questions answered with "yes" or "no". However, during the proceedings of this morning I noticed that the questions answered by a simple, direct "yes" or "no" might easily lead to misunderstandings, and I wouldn't like to answer a question with "yes" or "no" if some explanation is necessary.

THE COMMISSIONER: The question, of course, fundamentally is a question of whether or not the witness knows something. I recognize the correctness of what the witness says, but if it is necessary to clarify an answer by a witness, then

either one of the Counsel has the opportunity of asking additional questions for that purpose. Now, the only reason I make this rule is so as to avoid going beyond the range of a question and so that the answer will be a responsive answer. Now, this witness has been asked as to whether he knows a certain state of facts. He can say at this time whether or not he knows, and let Counsel ask him what he knows later on, if he wishes. You may proceed, Dr. Metzler.

DR. VON METZLER: Well, Mr. Commissioner, I put my question to the witness. I think he will be able to answer it.

THE COMMISSIONER: The witness may answer if he remembers the question.

A Well, as far as the legal prescription of the laws and decrees were made public, I knew the provisions and I knew the course one had to take if one wanted to approach the authorities, but I did not know the practice which was based on might and as far as it resulted from the political or official play of power. I am not in a position to say what sort of a legal institution the Keppler Office was in Austria. I knew that the Keppler and Veessmeyer Office had far-reaching influence, as far as recommendation and as far as orders to various official agencies went.

MR. NEWMAN: I think there is one part missing from the German text -- "and in this respect I think its activity was not legal."

DR. VON METZLER: That, sir, ends my examination.

DR. HATH: May I continue, Mr. Commissioner?

RECROSS EXAMINATION (continued)

JOSEF JOHAN

BY DR. HATH:

Q Direktor, please forgive me if I may take your attention for another few minutes. I would like to put to you a conversation which I have here in front of me in the form of minutes. This was a meeting which took place on 29th of May 1937, in the building of the Skoda-Metzler Works in Vienna, Kantgasse 3. Present were, from the Skoda-

Wetzel Works, Mr. Pollak and Mr. Englaender, and representing I.G. Farben, Heber-Lösche, Dr. Krueger, Schiller, and Andrus were present.

DR. NATH: Mr. Commissioner, I would like to submit this document as Exhibit Ilgner Number 2 for identification only.

THE COMMISSIONER: Ilgner Number 2, is it?

DR. NATH: Ilgner Number, yes, sir.

THE COMMISSIONER: Ilgner Number 2 will be marked for identification.

Q Dr. Johan, from these minutes I would like to read a passage to you - this is in connection with your redirect examination - in which you yourself maintained your point of view that the Creditanstalt intended to retain a majority of the shares of Skoda-Wetzel. I quote the paragraph in question: "After this Pollak sets forth the reasons which lead him to conceive of his idea about the consolidation of the chemical industry of Austria. Apart from the purely sentimental idea to have created it as a conclusion of his industrial career - a technically and commercially resistant construction, the state of affairs within the chemical industry of Austria was deplorable and unsound." The only beneficiary of this confused situation is Aussig, whose measures of consolidation in South-eastern European territory are a model. Therefore, in his view it is imperative to have a fusion of interests, and this as soon as possible, in order to provide Austrian chemical industry with that quiet and rest in the interior as to allow for scientific research and industrial development as other countries have it as well." And I further quote: from another paragraph: "As Pollak says the Creditanstalt had been informed about his plans and had agreed to the nitrogen project as he had suggested it. In connection with this project, the idea of taking over the majority of the Skoda-Wetzel shares by Anilin-Chemie could be realized. In this case, the Creditanstalt would also be prepared to help with credits for that part of the Anilin-Chemie participation which could not be provided in the form of delivery of machinery and technical equipment from Germany. During the conversation Pollak again and again came back to his idea of creating a community of interests of the Austrian

chemical industry -- he even spoke of a "merger"End of quote.

THE COMMISSIONER: I should like that document marked before you continue.

DR. NATH: Yes, sir, it is marked.

THE COMMISSIONER: Is it marked?

DR. NATH: Yes, sir.

THE COMMISSIONER: Yes, That's all right. Go ahead.

MR. NEWMAN: Just a moment, I would like Dr. Nath to give me the author of these minutes, whether a copy was sent to the Creditanstalt, and what the date was. Maybe he said it, but I didn't hear it.

DR. NATH: It is the minutes of a meeting which I referred to before, which took place on the 29th of May 1937, and the author is, on behalf of I.G.-Farben, Mr. Andrae. Whether or not a copy of these minutes went to the Creditanstalt, I am not able to say at this moment.

THE COMMISSIONER: Does that answer your question, Mr. Newman?

MR. NEWMAN: Yes, sir.

BY DR. NATH:

Q Now, Dr. Johan, you heard that Engineer Pollak stated he had, informed the Creditanstalt about his intentions and desires concerning the future development of Austrian chemical industry especially of Skoda-Wetzlar. Did you personally, Dr. Johan, know of these plans of Dr. Pollak and did you approve of them?

A I don't remember, and I don't know that I had knowledge of it because right up to March 1938 we firmly remained on our point to defend our majority of shares of Skoda-Wetzlar in spite of everything else. May I add something further?

THE COMMISSIONER: Yes, you may.

THE WITNESS: Even -- But even if we had known of these suggestions it would not have altered anything in our intentions of keeping the majority. After all, sale and purchase of stock participations, is not the only way of settling industrial differences. There are rules for these things, agreements and contracts. We can this way mark the limits

chemical industry -- he even spoke of a "merger"End of quote.

THE COMMISSIONER: I should like that document marked before you continue.

DR. NATH: Yes, sir, it is marked.

THE COMMISSIONER: Is it marked?

DR. NATH: Yes, sir.

THE COMMISSIONER: Yes, That's all right. Go ahead.

MR. NEWMAN: Just a moment, I would like Dr. Nath to give who is the author of these minutes, whether a copy was sent to the Creditanstalt, and what the date was. Maybe he said it, but I didn't hear it.

DR. NATH: It is the minutes of a meeting which I referred to before, which took place on the 29th of May 1937, and the author is, on behalf of I.G. Farben, Mr. Andrae. Whether or not a copy of these minutes went to the Creditanstalt, I am not able to say at this moment.

THE COMMISSIONER: Does that answer your question, Mr. Newman?

MR. NEWMAN: Yes, sir.

BY DR. NATH:

Q Now, Dr. Johan, you heard that Engineer Pollak stated he had, informed the Creditanstalt about his intentions and desires concerning the future development of Austrian chemical industry especially of Skoda-Wetaler. Did you personally, Dr. Johan, know of these plans of Dr. Pollak and did you approve of them?

A I don't remember, and I don't know that I had knowledge of it because right up to March 1938 we firmly remained on our point to defend our majority of shares of Skoda-Wetaler in spite of everything else. May I add something further?

THE COMMISSIONER: Yes, you may.

THE WITNESS: Even -- But even if we had known of these suggestions it would not have altered anything in our intentions of keeping the majority. After all, sale and purchase of stock participations, is not the only way of settling industrial differences. There are rules for these things, agreements and contracts. We can this way mark the limits

of the markets.

Q Thank you very much for your answer. Subsequently, I want to put to you the minutes about a visit which took place on the 23rd of September 1937.

THE COMMISSIONER: Before that question is asked, I am going to ask Counsel to tell me what part of the affidavit this line of questioning refers to.

DR. MITH: The question refers to a question asked by the Prosecution during redirect examination of the witness. It is the same question inquiring into the taking over of the majority of stock which has been discussed with the witness just now.

THE COMMISSIONER: You may proceed.

Q This was a visit with General Direktor Pollak on the 22nd of September 1937, at 6 p.m. Present were General Direktor Pollak, Direktor Weber-Andros, and Mr. Schiller.

DR. MITH: I would like for the record to mark this document as Exhibit Ilgner Number 3 for identification only.

MR. WEISS: I would like to know again who is the author of these minutes and was a copy sent to Mr. Pollak.

THE COMMISSIONER: Can you answer that?

DR. MATH: The author of these minutes is Mr. Schiller. Whether or not a copy of it went to the Creditanstalt, I don't know at the present time.

MR. WEISS: Just a minute. I asked if a copy was sent to Mr. Pollak.

DR. MATH: No, I am sorry, I don't know that either.

I would like to proceed as I did before and read continually the paragraph which I want to submit to the witness.

THE COMMISSIONER: Just a moment. I question somewhat the relevance of this line of testimony, but there is no objection, so you may proceed.

DR. MATH: Mr. Commissioner, as to the relevancy, I would like to emphasize that in the witness's affidavit in the 5th paragraph, on page 1, he speaks of Farben's greed to acquire the shares.

MR. NEWMAN: I feel, Mr. Commissioner, that at this stage relevance can not be based on the relevancy of the affidavit but only on the basis of the redirect.

THE COMMISSIONER: The examination is proper if on your redirect you brought this subject up. Then he would have a right to inquire further into it. Now, I can not recall whether or not your redirect examination did open the door.

DR. MATH: Yes.

MR. NEWMAN: I can not definitely deal with this subject, Mr. Commissioner, before I know what Dr. Math is going to read.

DR. MATH: Mr. Commissioner, that is as I introduced the question, exactly the same question of taking over the majority of shares. Just the same as I referred to by submitting the first exhibit, only with the difference that this time it was a conference which took place several months later.

THE COMMISSIONER: Well, I am going to let this go in. You may proceed.

DR. NATH: I quote: "Pollak then again discusses in detail his idea of the future development of the chemical industry in Austria. He and also Phillips would have to resign in two or three years hence. However, there was nobody to succeed him. Therefore, he couldn't do anything better but to hand over his holdings to I.G. Farben, which he regarded as the best trustee. The political situation of the day does no longer permit of a sale of shares, of which he had thought originally. Therefore, one had to take recourse to the more complicated way of a merger.

On this subject Pollak whose taking over the management of the new enterprise was also for us a pre-condition on account of the technical side of it, whether or not he could imagine Phillips as president of the corporation. Pollak, however during the course of the conversation drops his original suggestion to entrust a representative of the Creditanstalt with the position of president and declares that as long as the technical side remains in his hands he would willingly leave the representative position of President to Phillips.

THE COMMISSIONER: Dr. Nath, are you offering these exhibits in evidence? 1, 2 and 3.

DR. NATH: They will be included in my Document Book.

THE COMMISSIONER: Oh, I see. Very well.

DR. NATH: Yes, I already submitted them for evidence in this case.

THE COMMISSIONER: They are not being offered at this time though?

DR. NATH: Not in evidence, only for identification.

THE COMMISSIONER: Very well.

by DR. NATH:

2. During your examination you stated that Mr. Pollak en-

joyed the full confidence of the Creditanstalt. That is correct, isn't it?

A. As far as the question goes, it is correct.

Q. Well, I think we are going to agree, Dr. Johan. On the other hand I took note of your view that after the Anschluss the Creditanstalt obviously did not wish to part with the majority of the shares of Skoda-Wetzlar? Is that correct?

A. Yes.

Q. Would I be in agreement with you if I say that these conversations I put to you and which took place between Farben representatives and Mr. Pollak after what you had said that Engineer Pollak enjoyed the full confidence of the Creditanstalt, the gentlemen of I.G. Farben were bound to arrive at the conclusion that at that time negotiations for taking over the majority of the Skoda-Wetzlar stock would come to a successful conclusion?

DR. KATH: I think this is again calling for a mere conclusion on the part of the witness.

THE COMMISSIONER: So do I. Aren't you absolutely asking the witness to give a conclusion?

DR. KATH: No but, may I perhaps be permitted to formulate my question in a different way?

THE COMMISSIONER: Well, of course you can.

Q. Mr. Johan, if you recall the situation to your mind, as I stated it, did you know then that the gentlemen of I.G. Farben would have been of that opinion I stated just now? And that there were negotiations going on between Farben and Mr. Pollak along this line?

THE COMMISSIONER: I don't --

DR. KATH: I think, Mr. Commissioner, only the latter part of this question is the real question.

THE COMMISSIONER: That's right. The rest is purely speculative.

DR. KATH: I would be very grateful if the witness would be

Given the opportunity to answer the question in detail.

A. The following was the situation: —

THE COMMISSIONER: Just a moment. Has the reporter asked that question in full? Would you read it, please?

(The question was read back by the reporter as follows:

"Question: Mr. Johns, if you recall this situation to your mind as I stated it, did you know then that the gentlemen of I.G. Farben would have been of that opinion I stated just now? And that there were negotiations going on between Farben and Mr. Pollak along this line?"

THE COMMISSIONER: Now, just a minute. Translate that part of the question.

Will the reporter read the question again?

(The question was read back to the reporter as follows:

"Question: Mr. Johns, if you recall this situation to your mind, as I stated it, did you know then that the gentlemen of I.G. Farben would have been of that opinion I stated just now? —"

THE COMMISSIONER: Just a minute. Now, just translate that much of the question.

Now, that is the part of the question which the witness should not answer because that would be a pure speculation.

THE WITNESS:

A. The gentlemen from I.G. Farben know very well what Dr. Pollak's position as technical manager of Skoda-Wetzlar was, and, apart from

this, they knew exactly that next to the technical manager there was a commercial manager as well. And even since from the point of view of Skoda-Wetzlar, Direktor Pollak did not have authority to decide such commercial questions unless he was authorized, but he didn't have authorization to discuss the ownership by the Creditanstalt.

Q Now, witness, you yourself styled Mr. Pollak the leading brain of Skoda-Wetzlar and furthermore you have heard that Mr. Pollak himself stated that he had informed you and the Creditanstalt about these plans. May I put that to you and ask for your opinion?

A I did not know those documents you were reading before, nor did I know of those meetings and discussions which are mentioned in these documents.

THE COMMISSIONER: Just a moment, please, now. We have run over the customary time for taking our recess, and in view of the fact that the court reporter is having a heavy task, I think we should take our recess now and we will therefore be recessed for 10 minutes.

(A recess was taken.)

THE MARSHAL: The Commission is again in session.

THE COMMISSIONER: You may be seated.

Dr. Nath, you may resume your examination of this witness.

RE-CROSS EXAMINATION (Continued)

JOSEF JOHAM

BY DR. NATH (Continued):

Q I have only a few more questions. Before the recess, we talked about the negotiations which were conducted in 1937 and 1938, and about which I questioned you, according to those two documents which I submitted for identification. Now I want to ask you, do you know that during these negotiations the head of the Central Bookkeeping Department, Mr. Dancker, was in Vienna a second time in order to check over the state of affairs of Skoda-Wetzlar before these negotiations which I mentioned were to be brought to a final conclusion?

A I don't know that.

Q Now, Direktor, the following may appear somewhat surprising. How is it that the Chief of the Bookkeeping Department of a firm goes over the books of a firm which belonged to your concern and the Creditanstalt as the owner shouldn't have had any knowledge of it? Now, is it possible — because, after all, it is a comparatively long time, almost 10 years — that the fact has escaped your memory that at the time of the Anschluss Herr Dancker was still in Vienna and still busy with checking over the books?

A These are details which I, in my position as General Direktor, couldn't possibly deal with, I can't exclude it, however, but I don't remember at all to have known Herr Dancker, let alone that he was busy with this work or not. I testified to that this morning.

Q Did I correctly understand you that you mean to say that you, in your position as General Direktor, were only informed about the great overall line of business?

A This is correct. And, after all, there was a Referent in the Vorstand, and this was not I, but it was Hofrat Rottenberg.

Q I accept your statement, but still I want to deal with another point. Do you know, Witness, that after the Anschluss the Austrian authorities thought of making the Creditanstalt a grant bank for the territory of Southeastern Europe?

MR. NEWMAN: I object. Beyond the scope.

THE COMMISSIONER: He may answer by saying whether he knows. He may answer that question.

A I know nothing of this idea.

THE COMMISSIONER: That answers the question. You may proceed, Dr.

Q Then one final question. And I think you can answer it with either "yes" or "no". Is it a fact that the Skoda-Wetzlar Works have been confiscated by the USSR occupying power and that this question about who is the owner has not been clarified as yet?

MR. NEWMAN: I object. I think that has nothing to do with the

affidavit or redirect.

THE COMMISSIONER: What have you to say about that?

DR. NATH: Mr. Commissioner, I think that this question is a so-called character question, which is significant as to the attitude, if I may say so, and the credibility of the witness.

MR. NEWMAN: I don't think that this has anything to do with the character or credibility of this witness.

THE COMMISSIONER: I am going to rule the question as improper.

DR. NATH: There are no further questions, Mr. President.

THE COMMISSIONER: Have you any further questions, Dr. Newman?

MR. NEWMAN: I have no further questions.

THE COMMISSIONER: The witness is excused.

(The witness was excused.)

THE COMMISSIONER: Is your other witness present?

FRANZ ROTTENBERG, a witness, took the stand and testified as follows:

THE COMMISSIONER: Witness, you will please raise your right hand, say "I," —

WITNESS FRANZ ROTTENBERG: I.

THE COMMISSIONER: State your name.

WITNESS FRANZ ROTTENBERG: Franz Rottenberg.

THE COMMISSIONER: And repeat this oath after me. I swear by God, the Almighty and Omiscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

THE COMMISSIONER: The witness may be seated.

Mr. Witness, before you commence with your testimony, you are advised that you may speak fully and freely in answer to these questions propounded to you by Counsel, but you are also requested to make your answers strictly responsive and to add nothing except as to the direct question asked.

You may proceed with your examination, Dr. Newman.

DIRECT EXAMINATION

BY MR. NEWMAN:

Q Professor Rottenberg, will you please state again for the record your name and your address?

A University Professor Dr. Franz Rottenberg, Vienna (1), Schottengasse 6.

Q Do you have your affidavit of September 13th, 1947, before you?

A Yes, I have it.

MR. NEWMAN: Mr. Commissioner, this affidavit is part of our Document Book 52, English Book, page 51; German book, page 70. It is NI-10997 and Exhibit 1068.

Q Professor Rottenberg, did you recently discuss the contents of this affidavit with a representative of the Prosecution?

A Yes, I did.

Q Is there anything in this affidavit which you would like to correct or amend or supplement?

A No, sir.

MR. NEWMAN: Mr. Commissioner, I have no further questions.

THE COMMISSIONER: The witness is now available to the Defense.

DR. VON METZLER: Dr. von Metzler for the defendant Paul Raefliger.

THE COMMISSIONER: Please proceed, Dr. Metzler.

CROSS EXAMINATION

FRANZ ROTTENBERG

BY DR. VON METZLER: (For Raefliger):

Q. Professor, may I first ask you which position did you hold before 1938?

A. I was a member of the Vorstand of the Creditanstalt.

Q. May I ask, Professor, since when did you hold this position?

A. Since the 12th of May 1931.

THE COMMISSIONER: Let me interrupt a moment. Professor Rottenberg, we are having, as you will see -- as you will notice, the testimony translated into two languages, and for that reason it is necessary for the witness and for both Counsel to wait until the translator has been able to translate the previous question and answer.

BY DR. VON METZLER:

Q. Professor, did you in your capacity as a member of the Vorstand of the Creditanstalt have anything to do with the business affairs of Skoda-Wetzler A.G.?

A. Yes, indeed. I was the President of the Skoda-Wetzler A.G.

Q. May I ask until which date you were President?

A. I was President until the 13th of March 1938.

Q. May I further ask you: In your affidavit you mention the name of Mr. Pollak, whom you went over to work for the Skoda-Wetzler A.G. When did Mr. Pollak join the staff of Skoda-Wetzler?

A. I have to elaborate on this. Well, Skoda-Wetzler really was a combination of two firms, Skoda and Wetzler. Wetzler was a food processing firm which belonged to the concern of the Anglo-Bank. One of the daughters of Mr. Fleischmann, a councillor to the Anglo-Bank, was taken over from this firm and remained a Vorstand member of Skoda-Wetzler until March 1938. Connected with the firm of Wetzler was the firm Hausner -

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Sobotka, which was also a food processing plant and belonged to the sphere of interests of the Lower Austrian Escompte Corporation. And the first chemist-engineer in this firm, Hauser & Sobotka, was Mr. Pollak. And this merger is the reason why Direktor Felix Stranski later on appeared on the Board (Vorstand) of Kattler. That is, Hauser & Sobotka connected with Kattler.

THE COMMISSIONER: Just a moment, please. Dr. Kattler, will you explain, please, that the witness will not answer your question until it has been translated.

BY DR. VON METZLER:

Q. Professor, I think we can considerably shorten this discussion. Can you tell me when did the merger take place of the two firms?

A. I think it was immediately before the Anglo-Bank was taken over by the Creditanstalt.

Q. In which year was that?

A. It was '25 or '26. I don't know it exactly. The leading director there at that time was a brother of the General Direktor of the Berg und Huetten Mining Corporation, his name was Sunthor.

Q. Now, my first question, Professor Rottenberg, was? In which year did Mr. Pollak join the Skoda-Kattler A.G.?

A. For that purpose, you have to wait for what I have to say. When the firm of Kattler was taken over by the Creditanstalt, there was a torso left of the Czechoslovakian Solway and what had remained of it in Austria was Skoda. In Austria this was merged with Kattler, when the Anglo-Bank, which was in the possession of Kattler, was merged, and from this moment the firm which had its seat in the Kmtgasse was called Skoda-Kattler. Now, let me finish because the Creditanstalt desired that the gunpowder factory at Blumau, had somebody, and that was the reason for this merger, which was effected by a gentleman of the Creditanstalt, they took over Engineer Pollak.

Q. Well, Mr. witness, can you answer my question precisely, clearly.

and in a short manner? In which year did Mr. Pollak join the Vorstand, the Board of Directors, of Skoda-Wetzlar?

A. Continuing what I stated before, I would like to tell you that when the two firms were merged, a relative of a director Prague office of the Creditanstalt known by the name of Otto Engländer, was appointed manager of the firm.

Q. Now, Mr. Witness, excuse me. I am not interested in the person of Mr. Engländer. I only want to know from you in which year Pollak became a member of the Vorstand of Skoda-Wetzlar. Can you answer that very briefly? I only want to hear the year.

A. Through the merger of the two firms, Hauser-Sobotka and Wetzlar, my attention was drawn to the person of Pollak; naturally, only after I was appointed to Skoda-Wetzlar, because he was not there before that time. He simply was active with Hauser and Sobotka in connection with Wetzlar; he took over Skoda-Wetzlar not before the year of 1931.

Q. Now, are you absolutely sure about this fact? Maybe there is a gap in your memory.

A. Well, it is a long time, but I know exactly when I spoke to Mr. Sobotka. This was anyway after the time when I joined the staff of the Creditanstalt was at that time General-Director Sobotka who unfortunately isn't here today, reproached me severely for taking his best man away from him.

THE COMMISSIONER: I think that question is answered, Dr. Wetzlar.

DR. VON METZLER: Yes, sir.

Q. Well, Mr. Witness, I am afraid, in order to refresh your memory, I must put to you copy of a letter of I.G. Farben Bitterfeld, dated 11 November 1927, to I.G. Farben Ludwigshafen, signed by Dr. Pistor.

MR. VON METZLER: I would like to introduce this letter for identification only as Maefliger Exhibit Number 2. And I would like to read one passage from this letter to the witness, dealing with Mr. Pollak.

THE COMMISSIONER: I would like to have you to mark it first.

Q. Now I would like to read you one passage from paragraph 2 of the letter. I quote: "During the meetings in Frankfurt I also learned that Dr. Schmitz had received the visit of Skoda-Wetzlar's Mr. Pollak just about a month ago, at which occasion Mr. Pollak recommended a far-reaching support of Skoda-Wetzlar. If we are going to inspect the plant at this time we believe that perhaps too strong conclusions might be drawn from this visit on the part of Skoda-Wetzlar." Now, Mr. Witness, I want to ask you one question. Do you still maintain that Engineer Pollak did not join Skoda-Wetzlar before 1931?

A. Yes. The letter does not mean a thing. That letter doesn't state anything at all. This is purely internal correspondence of I.G. Farben. It is neither a letter from the Creditanstalt nor from Skoda-Wetzlar. Pollak could have done anything at that time, even in his capacity as director of Hausser and Sobotta, which had nothing to do with Skoda-Wetzlar and I couldn't have presented him, and I know for certain though I don't know whether the Creditanstalt files suffered any bomb damage that at that time if Direktor Guenther had known what he had been doing, he would have stopped him anyway and he wouldn't have tolerated it and that in 1927 Pollak certainly did not have the leading position in Skoda-Wetzlar. The whole thing is quite out of doubt. Furthermore, if these things had happened before 1931, I am sure that already before 1931 Skoda-Wetzlar would have looked quite different from what it actually did in 1931. There would have been no occasion at all to give Mr. Pollak a chance, any opportunities which he had received by the open hand of the Creditanstalt.

Q. Now, according to your opinion, did Mr. Pollak become General Direktor of Skoda-Wetzlar?

A. I believe I have still got the records about this in my files. He became General Direktor only in 1934, and this he became together with Mr. Engländer, because he didn't want to hurt the feelings of his colleague. There is no mistake possible.

Q Were there then two General Direktors?

A Yes, certainly. Englaender and Pollak.

Q Now, Mr. Witness, I would like to ask a question on your affidavit, and this refers to quite a definite paragraph in this affidavit.

This is Prosecution Exhibit 1068 in Book 52, page 51 of the English text, about the second paragraph on page 2 of your affidavit. I quote: "In the succeeding period, too, I.G. Farben renewed its efforts to become a stockholder in Skoda-Wetzlar A.G. As time went on, Farben became less demanding and in the end was prepared to be satisfied with 51% - finally even with 49%. Ing. Pollak and I were resolved, however, never to consider such an offer."

MR. NEWMAN: Mr. Commissioner, this is page 2 of the English.

BY DR. VON METZLER:

Q Now, Professor, I want to submit to you copies of a correspondence which took place in January and February 1938, immediately before the Anschluss, between I.G. Farben and Skoda-Wetzlar's Pollak, of which copies went to you.

The first of it is Prosecution Exhibit 1060, in Document Book 52, English, page 30. I quote: —

MR. NEWMAN: Excuse me, Mr. Commissioner, I think we have the same problem as while ago — to ask to read a letter in evidence which was read two hours ago; and I don't think there is any necessity of burdening the record with that.

THE COMMISSIONER: I think the way to handle that properly, if you wish this witness to testify in reference to it, would be to hand him the exhibit and let him look at it, and then frame your questions as you wish to elicit —

DR. VON METZLER: I will give it to him. Mr. Witness, may I ask you to read this passage I am showing you?

A Well, what do you want? This letter confirms everything I said.

Q Now, before you answer, Professor, may I submit to you two further documents for reading?

Q Were there then two General Directors?

A Yes, certainly. Englaender and Pollak.

Q Now, Mr. Witness, I would like to ask a question on your affidavit, and this refers to quite a definite paragraph in this affidavit.

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MR. NEWMAN: Excuse me, Mr. Commissioner, I think we have the same problem as while ago — to ask to read a letter in evidence which was read two hours ago; and I don't think there is any necessity of burdening the record with that.

THE COMMISSIONER: I think the way to handle that properly, if you wish this witness to testify in reference to it, would be to hand him the exhibit and let him look at it, and then frame your questions as you wish to elicit —

DR. VON METZLER: I will give it to him. Mr. Witness, may I ask you to read this passage I am showing you?

A Well, what do you want? This letter confirms everything I said.

Q Now, before you answer, Professor, may I submit to you two further documents for reading?

The first one is Prosecution Exhibit 1061, which is to be found in Book 52 on page 32 of the English.

A Dr., may I answer that?

Q No, no. I didn't put the question yet. Now, please, may I forbear on your patience a little further before I ask my question and read that exhibit which I am submitting to you now. This is Prosecution Exhibit 1063, to be found in Volume 52, page 37 of the English. Please, will you be good enough to read that?

Did you read it?

A Oh yes, I know those letters very well.

THE COMMISSIONER: Go ahead with your question then.

BY DR. VON METZLER:

Q Now comes my question, Professor. Now, Professor, do you mean to maintain that before the Anschluss there was no intention whatever on the part of Creditanstalt und Bkome-Meteler to leave 49 percent of the shares to Farben under certain conditions?

A Now, Dr., please believe what I say. It is entirely impossible — impossible altogether. Do you think that this Pollak would have written two letters to me had it been possible?

Q I simply can't understand your reasoning, Professor. These letters explicitly state the desire and wish of the Austrians to part at least with the minority of the shares.

THE COMMISSIONER: The witness will have to pause while the interpreter catches up.

BY DR. VON METZLER:

A I only can say that it is very easy within the framework of proceedings before a court to call such a thing a desire. I have to say that again and again it was the Nitrogen project which caused us to negotiate at all, we talked to one another. There would have been no need for it unless we had cartel-relations. If there had been an arrangement, believe me, all this would have been unnecessary. I can only repeat, it is not easy during a trial after 10 years to argue such a commercial affair

on the basis of dry letters.

Q Now, excuse me. I want to ask my question again and I want to state it very, very concisely, and this will be my last question in this connection.

MR. NEWMAN: Mr. Commissioner, I think there is some confusion here and that at least two-thirds of what the witness said first has not been translated.

THE COMMISSIONER: I am sure of that, Mr. Newman.

MR. NEWMAN: And if you will agree with me, I suggest that it be read again from the German record and it be translated before the next question is put.

THE COMMISSIONER: Before the question is read again, I shall rule that a question is not before the Court, because it was not in the form of a question but, rather, in the form of an argument with the witness.
BY DR. VON METZLER:

Q Now, Professor, do you mean to say that in 1938 neither Skoda-Metzler nor the Creditanstalt were prepared and ready to sell or otherwise leave the minority of the stock of 49 percent to I.G. Farben, although the letters don't say so, but would indicate that exactly the opposite desire was expressed?

THE COMMISSIONER: That is a proper question. Go ahead.

MR. NEWMAN: I am sorry to interrupt again. I think it is not said in the letters and therefore it is confusing the witness. The Creditanstalt had, all together, less than 90 percent, and if the Counsel for Defense puts it that 49 percent were to be given to I.G. Farben, that would have meant that Creditanstalt would have lost its majority. Therefore, I feel that this question is misleading.

THE COMMISSIONER: Now, Dr., do I understand that you are objecting to the question?

MR. NEWMAN: Yes. I think it is just a misunderstanding. I think what Dr. von Metzler really means is whether a minority should be given to Skoda-Metzler, and not 49 percent.

THE COMMISSIONER: Dr. von Metzler, I wonder if you could rephrase your question so that it would be clear. Apparently Mr. Newman doesn't understand it, and, of course, what we wish to do is get a clear statement. Your question, I wouldn't say is proper or improper, because, in view of the discussion we have had, it is difficult to say. So it might be to your advantage to rephrase it, if you can.

DR. VON METZLER: Then I would like to submit that one sentence which is contained in the witness's own affidavit which, according to my opinion, caused the misunderstanding of the Prosecutor. And now I quote: "As time went on Farben became less demanding and in the end was prepared to be satisfied with 51% - finally even with 49%."

Q Now, Professor, I ask you: By those 49 percent, do you mean a percentage with reference to the whole stock?

A May I answer? For me, 87.4 percent in fact meant 100 percent. And of these, the first talked of 51 percent and later on of 49 percent. This is how I want my affidavit to be understood.

THE COMMISSIONER: The answer seems to be clear. You may ask your next question.

Q Now then, I want to rephrase my question on the basis of the correspondence submitted to you. Do you still want to maintain in the face of these letters that neither Skoda-Metzler nor the Creditanstalt at that time were prepared even to accede a minority of the stock to I.G. Farben?

A Well, I want to answer that way; Skoda-Metzler did not have any freedom of action. Decisive was the Creditanstalt wouldn't have parted with the shares.

THE COMMISSIONER: Now, Dr. von Metzler, have you reached a point in your examination where you could break off and resume tomorrow morning?

DR. VON METZLER: Yes, sir.

THE COMMISSIONER: In that case then we will recess this hearing until 9:30 tomorrow morning.

(A recess was taken from 1630 hours, 6 Feb 48, until 0930 hours, 7 Feb 48.)

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